7-21-92
Vol. 57 No. 140

federal register

Tuesday
July 21, 1992

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-21-92
Vol. 57 No. 140
Pages 32149-32412

federal register

Tuesday
July 21, 1992

Briefing on How To Use the Federal Register
For information on briefings in San Francisco, CA and Seattle, WA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SAN FRANCISCO, CA

WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1–800–726–4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
RESERVATIONS: Federal Information Center, 1–800–726–4995

Contents

Federal Register

Vol. 57, No. 140

Tuesday, July 21, 1992

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

RIN 3206-AD83

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On June 13, 1989, the Office of Personnel Management published proposed rules that (1) outline which material the Office of Personnel Management (OPM) generally makes available for public inspection and copying pursuant to the Freedom of Information Act (FOIA) and, (2) implement Executive Order 12600, concerning the release of confidential commercial information requested under the FOIA. After considering comments received after publication, OPM has revised its regulations accordingly. In addition, this revision reflects the replacement of the Index to Information with the Handbook of Publications, Periodicals, and FPM Issuances and an addendum, revises the list of key officials in § 294.107, and updates the citation in § 294.111(b).

EFFECTIVE DATE: This rule becomes effective August 20, 1992.

FOR FURTHER INFORMATION CONTACT: C. Ronald Trueworthy, 703–908–8550.

SUPPLEMENTARY INFORMATION: OPM published proposed rules with request for comment in the June 13, 1989, **Federal Register** (54 FR 25120). The proposed rules included changes to § 294.106 of OPM's Freedom of Information Act (FOIA) regulations, "Handbook of Publications, Periodicals, and FPM Issuances and Addendum," to reflect more clearly OPM's practices and the requirements of the FOIA as to what is made available for public inspection and copying when the material is not published or offered for sale. In addition, the proposed rules added § 294.112, "Confidential commercial information," to comply with E.O. 12600. Section 7 of E.O. 12600 directed each executive department and agency subject to FOIA, to establish by regulation, after notice and public comment, procedures for notifying submitters of records containing confidential commercial information, when those records were requested under the FOIA and it was determined that the records may have to be disclosed. Three organizations (a union, a public citizens group, and a reporters committee) commented on the proposed regulations.

In the interest of clarity, OPM published subparts A and D of part 294 of its regulations in their entirety, but asked for comments only on §§ 294.106 and 294.112. Two organizations (the union and the public citizens group) provided comments on other sections of the regulations. However, those comments, on sections other than §§ 294.106 and 294.112, are outside the scope of this rulemaking.

The following paragraphs discuss comments received on OPM's regulations according to the section involved.

Section 294.106—Handbook of Publications, Periodicals, and FPM Issuances and Addendum. One commentor suggested that the language used in § 294.106(a)(1) be more explicit by deleting the word "generally" and the phrase "which are relied on and cited by the OPM as precedent." OPM agrees with this suggestion, in that it is consistent with the terms of the FOIA, and has made the changes accordingly.

The same commentor recommended that the language in § 294.106(a)(2) incorporate the precise statutory categories of material exempt on the basis of preventing a clearly unwarranted invasion of personal privacy. In response to this comment, we have revised § 294.106(a)(2) to conform more precisely with the terms of the FOIA, at 5 U.S.C. 552(a)(2), regarding the removal of identifying details from opinions, statements of policy, interpretations, or staff manuals or instructions. This commentor also recommended that "or where release is not in accordance with OPM regulations, administrative staff manuals or instructions referenced in subpart D of 5 CFR part 294" be removed as not supported by statute. OPM has reworded the language in this section so that only the FOIA's exemptions will be the basis for withholding information.

Section 294.112—Confidential commercial information. One commentor objected to the 10-day response time specified in § 294.112(h) as requiring de facto violation of both the Freedom of Information Act and E.O. 12600. They state that giving a submitter 10 days to object, after being notified that a request has been received, prevents OPM from meeting the mandated time limits of the FOIA when business information is requested. OPM has addressed this concern by revising § 294.112(h) to afford the submitter "a reasonable period of time" to object.

The same commentor objected to the requirements of § 294.112(k), which states that OPM will not "officially" receive a request or appeal until the expiration of the time allowed submitters to object to release of confidential commercial information. After further consideration, we have decided to delete § 294.112(k) from the final regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 294 as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority for part 294 is revised to read as follows:

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, and E.O. 12600, 52 FR 23781 (June 25, 1987).

2. Section 294.106 is revised to read as follows:

§ 294.106 Handbook of Publications, Periodicals, and FPM Issuances and addendum.

(a)(1) Annually, OPM publishes OPM-AG-PSD-01, "Handbook of Publications, Periodicals, and FPM Issuances," and accompanying addendum. This handbook and addendum lists material published and offered for sale are available for public inspection or copying. Unless the material is published and offered for sale, OPM makes available for public inspection and copying:

(i) Final opinions made by OPM in the adjudication of cases;

(ii) OPM policy statements and interpretations adopted by OPM but not published in the **Federal Register**; and

(iii) OPM administrative staff manuals and instructions that affect a member of the public.

(2) To the extent required to prevent a clearly unwarranted invasion of personal privacy, OPM may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction.

(b) A copy of this handbook and addendum is available at no cost from the—Publishing Management Branch, Office of Personnel Management, room B464, 1900 E Street, NW., Washington, DC 20415-0001.

(c) OPM indexes material in this handbook and addendum format for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Handbook of Publications, Periodicals, and FPM Issuances" and addendum more frequently than annually because of the small number of revisions that occur.

3. Section 294.107 is amended by revising paragraphs (b) and (c) to read as follows:

§ 294.107 Places to obtain records.

* * * * *

(b) The following is a list of key Washington, DC, officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the official's title and the following address: Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

Send to—	For subject-matter about—
Associate director for administration.	Administrative services; information management; and personnel.
Associate director for retirement and insurance.	Retirement; life and health insurance.
Associate director for personnel systems and oversight.	Personnel management in agencies; pay; position classification; wage grade jobs; performance management; and employee and labor relations.
Assistant director for workforce information.	Governmentwide personnel statistics; official personnel and employee medical folders.
Associate director for investigations.	Background investigations and related records on individuals.
Associate director for career entry.	Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped.
Chief financial officer	Financial management.
Director for human resources development.	Training, education, and development; senior executive service.
Director, Washington area service center.	Examining, testing, and training operations in Washington, DC.

(c) Direct requests for records on subjects not specifically referred to in this section or in the handbook or addendum, to Plans and Policies Division (CHP-500), Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

* * * * *

4. In § 294.111 paragraph (b) is revised to read as follows:

§ 294.111 Custody of records; subpoenas.

* * * * *

(b) See 5 CFR part 297, Subpart D—Disclosure of Records, of this title, for the steps other officials should take on receipt of a subpoena or other judicial order for an Office record.

5. Section 294.112 is added to read as follows:

§ 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order 12600, apply to this section:

(1) *Confidential commercial information* means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as

exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter a reasonable period from the date of the notice to provide OPM with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specification shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm, that would result from disclosure. Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice, which shall include:

(1) A statement of the reasons why the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

(k) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

[FR Doc. 92-17034 Filed 7-20-92; 12:01 pm]
BILLING CODE 6325-01-M

---

5 CFR Part 531

RIN 3206-AE24

Pay Under the General Schedule; Interim Geographic Adjustments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on the interim geographic adjustments (IGA's) authorized by section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and Executive Order 12786 of December 26, 1991. The final regulations establish rules for applying these adjustments to General Schedule (GS) employees in the following Consolidated Metropolitan Statistical Areas (CMSA's): New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA.

EFFECTIVE DATE: These regulations are effective on the first day of the first pay period beginning on or after August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) authorized the President, at his discretion, to establish interim geographic adjustments (IGA's) of up to 8 percent of basic pay in one or more Consolidated Metropolitan Statistical Areas (CMSA's), Primary Metropolitan Statistical Areas (PMSA's), or Metropolitan Statistical Areas (MSA's) that meet certain criteria. On December 12, 1990, the President issued Executive Order 12736, establishing IGA's of 8 percent in three CMSA's and authorizing OPM to prescribe regulations governing the application of IGA's to General Schedule (GS) employees, including the extent to which IGA's shall be payable to employees receiving special salary rates. Executive Order 12786 of December 26, 1991, reiterated these provisions and also delegated to OPM the authority to extend IGA's to employees in other categories of positions.

The three CMSA's in which IGA's have been authorized by the President are New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA.

Interim regulations implementing IGA's were published on January 9, 1991 (56 FR 771). The 60-day public comment period ended on March 11, 1991. Comments were received from seven Federal agencies and one labor organization. These comments, as well as certain changes and clarifications of the interim regulations, are summarized below.

Boundaries of Interim Geographic Adjustment Areas

Two agencies recommended that the regulations identify covered areas by their standard geographic location codes. OPM agrees and will issue and distribute to agencies a list of standard geographic location codes for the IGA areas as reported to the Central Personnel Data File (CPDF).

An Agency and the labor organization suggested that Mercer County, NJ, be included in the New York CMSA. Since the Office of Management and Budget (OMB) defines CMSA's, PMSA's, and MSA's, OPM does not have authority to modify these definitions.

Two agencies commented that Federal agencies should be permitted to request deviations in the boundaries of IGA areas in cases where adverse impact can be clearly demonstrated. FEPCA specifically limits IGA areas to CMSA's, PMSA's, and/or MSA's. OPM does not have authority to modify the boundaries of these areas and cannot authorize such deviations.

An agency asked that the boundaries of IGA areas be made consistent with those established for special salary rate authorizations. The three IGA areas designated by the President are CMSA's defined by OMB, and IGA's apply to all GS positions in each area. Special salary rates are established on a local, nationwide, or worldwide basis to address the staffing problems of one or more agencies with respect to specific occupations and grades. OPM has already informed Federal agencies that, in the future, we will no longer accept special rate requests in which the geographic area to be covered includes both inside and outside an IGA area. Separate requests must be submitted for such areas, and each such request will be considered on its own merits. OPM also plans to review the geographic

coverage of all existing special rates authorizations before the implementation of the new locality pay system under FEPCA in January 1994.

Extension of Interim Geographic Adjustments to Other Areas

An agency commented that San Diego, Santa Barbara, Philadelphia, Baltimore, the Boston/Nashua area, Chicago, Dallas/Ft. Worth, the State of Connecticut, and Washington, DC, need immediate relief.

Section 302(b) of FEPCA provided that in determining areas where an IGA is needed, the President shall consider available evidence of significant pay disparities, including Bureau of Labor Statistics (BLS) information on pay relatives, relevant commercial surveys, and recruitment or retention problems. In response to a congressional request, OPM reviewed 18 additional cities using these criteria. In January 1992, OPM issued a report to the President and Congress recommending no extension of IGA's to other areas at this time.

Interim Geographic Adjustments and Special Salary Rates

An agency suggested that OPM designate IGA's as basic pay for the computation of the highest previous rate of pay for employees who are reassigned out of an IGA area not at their request. The agency argued that this measure would be consistent with the treatment of a special salary rate as the highest previous rate in exceptional cases when employees are reassigned to nonspecial rate positions and the action serves the interest of the agency.

The IGA's granted to GS employees in the Los Angeles, San Francisco, and New York CMSA's are intended to alleviate the widespread disparities in pay and related problems of recruitment and retention in these particular areas before locality-based comparability payments become effective in January 1994. As a result, OPM considers it inappropriate to treat IGA's as basic pay for the computation of the highest previous rate of pay and thereby potentially continue the benefit of the IGA for employees who move to other geographic areas.

An agency commented that local special salary rates based on the inability to recruit and retain because of remoteness or working conditions, as opposed to a pay disparity, should not be offset by IGA's. Local special salary rates are set at a level relative to the local labor market. If problems of recruitment and retention of well-qualified personnel continue for reasons other than disparities in pay, an agency may request higher special salary rates and/or make use of other FEPCA authorities such as recruitment bonuses and retention allowances.

An agency stated that employees on a local special salary rate authorization and entitled to retained pay under 5 CFR part 536 can receive a greater salary increase than others on the same authorization. The agency contended that employees continuing on retained pay receive one-half of the special salary rate increase plus the full 8 percent IGA, but those employees not entitled to retained pay receive the greater of the adjusted special salary rate or the pay for the corresponding grade and step of the General Schedule plus the 8 percent IGA.

Employees on retained pay under a local special salary rate authorization do not receive a greater salary increase than other employees on the same authorization. While employees on retained pay receive one-half of the special salary rate increase, those not on retained pay receive the full amount of the increase. In all cases, the total pay of an employee receiving a local special salary rate is an amount equal to the greater of (a) the adjusted annual rate of pay; or (b) his or her rate of basic pay under the local special salary rate authorization, without an IGA.

Miscellaneous

An agency commented that § 531.103(d), which states that the adjusted rate is payable only when the employee is in a pay status, was unnecessary. OPM believes that this provision is a useful reminder that an employee may not be paid an IGA during periods of absence without leave or leave without pay.

An agency asked whether a GS employee who was reduced in grade from an SES position and is entitled to pay retention under 5 CFR part 536 is eligible for an IGA. The answer is yes. Section 531.101 of the final regulations clarifies that the "scheduled annual rate of pay" includes a retained rate of pay under 5 CFR 359.705.

An agency asked how to compute overtime pay when an employee in an IGA area is paid above GS–10, step 1, but is ineligible for an IGA because he/she receives a local special salary rate under 5 U.S.C. 5305 that is higher than the adjusted annual rate of pay under the IGA regulations, and the local special salary rate authorization does not include GS–10. As stated in § 531.103(b)(3), the adjusted rate of pay is considered basic pay for purposes of computing the limitation on overtime pay under 5 U.S.C. 5542(a). This is true even if the employee does not actually receive the adjusted rate of pay due to receipt of a greater local special salary rate.

Finally, OPM is revising § 531.102(b), concerning the computation of hourly, daily, weekly, and biweekly adjusted rates of pay, to be consistent with the final regulations for "Special Pay Adjustments for Law Enforcement Officers in Selected Cities" published on January 22, 1992 (57 FR 2431).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Wages, Adminstrative practice and procedure.

Constance Berry Newman,

Director, U.S. Office of Personnel Management.

Accordingly, OPM's interim regulations under 5 CFR part 531 published January 9, 1991, at 56 FR 771, are adopted as final with the following changes:

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart A issued under sec. 302, Pub. L. 101–509, 104 Stat. 1462, and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C also issued under sec. 404, Pub. L. 101–509, 104 Stat. 1466;

Subpart D also issued under 5 U.S.C 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, paragraph (c) under the definition of *Scheduled annual rate of pay* is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Scheduled annual rate of pay, means—

* * * * *

(c) The retained rate of pay under part 536 of this chapter or 5 CFR 359.705, where applicable, exclusive of additional pay of any kind.

* * * * *

3. In § 531.102, paragraph (b) is revised to read as follows:

§ 531.102 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

* * * * *

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basis daily tour of duty;

* * * * *

[FR Doc. 92-17035 Filed 7-20-92; 12:01 pm]

BILLING CODE 6325-01-M

---

5 CFR Parts 831 and 841

RIN 3206-AD65

Civil Service Retirement System and Federal Employees Retirement System; General Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its interim rules relating to military service deposits under the Civil Service Retirement System (CSRS) and general administration of the Federal Employees Retirement System (FERS). The CSRS rules provide relief in cases where unusual circumstances prevent an individual from making the deposit for post-1956 military service before his or her separation for retirement; the FERS rules have general application to all types of FERS basic benefits. The topics covered include the regulatory structure for FERS, disclosure of information from retirement records, general application requirements, claims processing procedures, computation of interest, waiver of benefits, and State income tax withholding. These regulations are necessary to allow late military service deposits under CSRS where circumstances warrant, and to complete our FERS general administration regulations.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (FTS) 266-0299, or (202) 606-0299.

SUPPLEMENTARY INFORMATION:

1. Background on the FERS Interim Regulations

The Federal Employees Retirement System (FERS) Act of 1986, Public Law 99-335, created a new retirement system for Federal employees. Part 841 of title 5, Code of Federal Regulations, contains the rules that have general application to all types of FERS basic benefits.

On January 16, 1987, we published (at 52 FR 2058) interim regulations governing waiver of annuity benefits under the FERS Act of 1986. These interim regulations were subpart H of part 841.

On February 23, 1987, we published (at 52 FR 5432) interim regulations to provide for withholding of State income taxes from benefits payable under the FERS Act. These interim regulations provided the procedures that OPM will follow in entering into agreements with States to withhold State income taxes and in withholding those taxes from FERS benefits. These interim regulations, contained in subpart J of part 841, were identical to the corresponding provisions (subpart S of part 831) under the Civil Service Retirement System (CSRS).

On April 15, 1987, we published (at 52 FR 12132) interim regulations to implement provisions of the FERS Act of 1986 that provide that interest be included in amounts paid as FERS basic benefits or in amounts collected by FERS. These interim regulations, contained in subpart F of part 841, described the methodology for computing interest when interest must be paid or collected in connection with FERS basic benefits.

On May 21, 1987, we published (at 52 FR 19242) interim regulations covering the general "housekeeping" requirements of FERS, general application requirements, and claims processing procedures. The interim regulations were divided into three subparts. Subpart A contained the "housekeeping" rules including the regulatory structure for FERS, definitions that apply throughout the FERS regulations (parts 841 through 846), evidentiary requirements for documenting service histories, rules for disclosure of information from FERS records, rules for computing when time limits specified in parts 841 through 846 expire, and the order of priority for various obligations that can be satisfied from an annuity. On April 17, 1990, we published (at 55 FR 14229) final rules that among other things amended the description of the regulatory structure for FERS contained in subpart A. Subpart B contained the general application requirements applicable to all FERS basic benefits. On January 11, 1990, we published (at 55 FR 994) interim rules adding § 841.204 to subpart B. That section protects the rights of certain survivors of former employees who die after separation from Federal service with title to an immediate reduced annuity but who did not file an application for that annuity. On October 11, 1990, we adopted (at 55 FR 41179) § 841.204 with amendments. Subpart C contained claims processing procedures including information on where to file applications, and reconsideration and appeal rights.

Part 841 also contains four other subparts that are not now being adopted as final rules. Subpart D contains regulations to implement the Government cost provisions of the FERS Act of 1986. These rules provide the methodology for computing Government agencies' shares of the cost of funding basic FERS benefits, the notice that will be provided for changes in rates, the appeal rights available to agencies, and the initial rates applicable to all agencies. Subpart E contains regulations to implement the employee deduction and Government contribution provisions of the FERS Act of 1986. On July 6, 1987, we adopted (at 52 FR 25196) subparts D and E as final rules.

Subpart G of part 841 contains regulations concerning cost of living adjustments to FERS basic benefits. On April 17, 1990, we adopted (at 55 FR 14229) subpart G as final rules.

On December 31, 1986, we published (at 51 FR 47190) subpart I as interim regulations. This subpart establishes procedures for handling court-ordered payments for benefits under FERS. Subpart I was intended to implement provisions of the FERS Act of 1986 that require OPM to honor court orders entitling former spouses or legally separated spouses to benefits. On December 30, 1986, we had published (51 FR 47021) proposed regulations that would change our procedures for handling State court orders affecting retirement benefits under the CSRS. The interim FERS regulations on court orders affecting retirement benefits conformed with the proposed CSRS regulations. However, on September 9, 1991, we withdrew (at 56 FR 45883) the proposed CSRS regulation, and on January 2, 1992, we published (at 57 FR 120) proposed regulations for handling court-ordered benefits under both CSRS and FERS. The proposed rules would create a new part 838 of title 5 of the Code of Federal Regulations, and would eliminate subpart I of part 841. Accordingly, we are not adopting subpart I as final rules at this time.

2. Comments on the FERS Interim Regulations

We received a total of six comments on the four sets of interim regulations covered by this final rule.

One commenter objected to the stringent requirements under § 841.106(b) that must be met before OPM can accept secondary evidence in place of primary evidence in the form of official records, and suggested that the language in § 831.103(b), the

corresponding CSRS regulations, be substituted. Section 841.106(b) was written to clarify the requirements for the use of secondary evidence. Section 831.103(b) was intended to allow the use of secondary evidence only if the records repository has certified that the official records have been lost, destroyed, or are incomplete. We intend to amend the CSRS regulations to make a similar clarification.

In addition, we are amending § 841.106(b) to eliminate the description of a procedure that no longer applies. As amended, § 841.106(b) provides that the certification by the official records repository for the records in question that the records have been lost, destroyed or are incomplete is a prerequisite to the acceptance of any evidence other than the official records.

The commenter also questioned the portion of § 841.108 that provides for disclosure of information from retirement records only to the individual who is the subject of the record. The commenter was concerned that executors, administrators, or survivors of a deceased employee would be denied access to these records. The commenter has misinterpreted the regulation. Section 841.108(a)(2) states that we will, except for certain medical records, disclose the contents of the retirement records to the individual to whom the records apply. It does not prohibit disclosure to others. Section 841.108(a)(3) states that we will disclose information from the records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). Subsection (a)(2) of the OMB Privacy Act Guidelines (Circular No. A–108, published at 40 FR 28948) provides that the privacy protections apply only while the subject of the record is living. Section 841.108 does not restrict access to records after the death of the subject of the records.

One commenter objected to two aspects of § 841.306. The commenter questioned the portion of that section and § 841.305 that permits OPM to decide whether a decision should be subject to reconsideration or an immediate appeal to the Merit Systems Protection Board (MSPB). We believe that we should retain flexibility to permit an immediate appeal to MSPB in cases in which the additional step of an OPM reconsideration would be inappropriate. Sections 841.305(a) and 841.306(a) provide such flexibility to speed up the appeal process by issuing a final OPM decision at the initial stage in cases where this is warranted. MSPB offers a de novo review of the decision with the right to a hearing, thus ensuring that the claimant's position may be fully reviewed at the appeal level.

The commenter also objected to the commencing date of the 30-day period in which a reconsideration request must be filed under § 831.306(d). The commenter suggested that the period commence when the claimant receives the decision rather than when we issue it. The commenter's suggestion would create unnecessary difficulties in documenting the commencing date of the 30-day period. We can readily identify the date of issuance, but establishing the date of receipt would require certified mail, which is both expensive and an administrative burden. The regulation provides for waiver of the time limit when circumstances beyond the claimant's control, such as delays in receiving decisions, prevent a timely request for reconsideration.

The remaining comments suggested editorial changes.

3. Other FERS Changes

We have removed § 841.110 that established the order of priority for withholding from an annuity when the annuity is not large enough to cover all withholdings. We are reconsidering the order of priority and will issue a new order of priority in connection with a corresponding CSRS provision later.

The amendment to subpart F corrects two incorrect references on interest on service credit deposits.

4. Military Deposits

OPM published (at 49 FR 20631) interim regulations on May 16, 1984, providing relief to retirees who, because of administrative error or delay, were unable to make a deposit for post-1956 military service prior to their separation. Such employees may make a deposit to their former employing agency after separation, so long as it is completed within the time limit set by OPM when OPM determines that an administrative error has been made. We did not receive any comments.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because it only affects retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Handicapped, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Survivors.

5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim rules under 5 CFR part 831 published on May 16, 1984, at 49 FR 20631 and under part 841 published on January 16, 1987, at 52 FR 2058; on February 23, 1987, at 52 FR 5432; on April 15, 1987, at 52 FR 12132; and on May 21, 1987, at 52 FR 19242; as amended on January 11, 1990, at 55 FR 994; April 17, 1990, at 55 FR 14229; and October 10, 1990, at 55 FR 41179; as final rules with the following changes:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. An authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.507 also issued under section 505 of Public Law 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart A—General Provisions

2. In section 841.106, paragraph (b)(2) is revised to read as follows:

§ 841.106 Basic records.

* * * * *

(b) * * *

(2) When the official records repository for the records in question certifies that the records in question are lost, destroyed, or incomplete, OPM will accept such inferior or secondary evidence that it considers appropriate under the circumstances, and such inferior or secondary evidence is then admissible.

* * * * *

3. Section 841.110 is removed.

Subpart F—Computation of Interest

§ 841.604 [Amended]

4. Section 841.604 is amended by removing "§ 842.304" and "§ 842.306" and inserting, in their place, "§ 842.305" and "§ 842.307" respectively.

[FR Doc. 92-17036 Filed 7-20-92; 12:01 pm]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC58

Sugar and Crystalline Fructose Information Reporting and Recordkeeping Requirements

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with changes, an interim rule published at 56 FR 47351-47375 on September 19, 1991. This final rule sets forth requirements for the monthly reporting by sugarcane and sugar beet processors and by cane sugar refiners of information on sugar imports and other receipts, processing inputs, production, distribution, stocks, and plant capacities. In addition, manufacturers of crystalline fructose are required to submit monthly reports of their distribution of crystalline fructose.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Barry, Director, Sweeteners Analysis Division, Agricultural Stabilization and Conservation Service, room 3741, South Agriculture Building, U.S. Department of Agriculture, Washington, DC; telephone: (202) 720-3391.

SUPPLEMENTARY INFORMATION:

Summary of the Provisions of This Final Rule

With the amendments made necessary by the comments referred to below and minor, nonsubstantive language and format changes for purposes of clarity, the interim rule published in the **Federal Register** at 56 FR 47351 on September 19, 1991, as modified by the final rule published at 56 FR 59196 on November 22, 1991, is adopted as a final rule. This final rule sets forth requirements for the monthly reporting, by sugarcane and sugar beet processors and by cane sugar refiners, to the Commodity Credit Corporation, of information on sugar imports and other receipts, processing inputs, production, distribution, stocks, and plant capacities. In addition, manufacturers of crystalline fructose will be required to submit monthly reports of their distributions of crystalline fructose. Initial reports will be due on 15 days after publication of this rule in the **Federal Register.** Failure to furnish the information may result in a civil penalty being imposed upon the processor, refiner, or manufacturer.

The information collected pursuant to this subpart will be used primarily in administering the domestic price support program for sugarcane and sugar beets, making the necessary estimates and determinations required by the standby marketing allotment program for sugar and crystalline fructose, monitoring to detect whether imported articles are causing material interference with these programs, and establishing the total quota amount for entries of imported sugar under the lower-tier duties of the tariff-rate quota for imported sugars, syrups, and molasses. Abstracts of the data collected will be published by USDA on a monthly and cumulative basis.

This final rule provides that information needs will be achieved by applicable persons completing new CCC forms (CCC-831 through CCC-833, and CCC-835). Copies of these forms are published immediately following this final rule.

Rulemaking Analyses

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this interim rule will not result in: (1) An annual effect to the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Assessment and an Environmental Impact Statement are not necessary for this final rule.

[The Office of Management and Budget (OMB) has assigned approval number 0560-0138 for the information collections submitted for review during the interim stage of this rule.] The revised paperwork and recordkeeping requirements imposed by this final rule have been resubmitted to OMB for expedited review under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

The public reporting burden for these collections of information is estimated to vary widely among respondents depending on the number of factories reported under each responding company. Most companies have only one factory but some have as many as eight. The mean and median reporting burdens estimated for each reporting form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are as follows:

	Estimated burden	
	Mean	Median
CCC-831 Sugar Beet Processors	90	75
CCC-832 Sugarcane Processors	35	30
CCC-833 Sugar Distributions	145	60
CCC-835 Cane Sugar Refiners	90	60

Form CCC-834, Crystalline Fructose Distributions, has been eliminated. Only total distribution is required to be reported by each of two manufacturers of crystalline fructose, at an insignificant burden.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB) #0560-0138), Washington, DC 20503.

The program covered by this final rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Statutory Background

Various federal statutes impose responsibilities on the Secretary of Agriculture with respect to supporting and protecting the domestic sugar industry. These responsibilities of the Secretary, discussed in detail in the preamble to the interim rule, make necessary the collection of comprehensive information with respect

to the supply and demand for sugar. In summary, the Secretary of Agriculture is required by law to achieve, without significant expenditure of federal funds, a range of objectives with respect to maintaining market prices for raw and refined sugar, controlling domestic and imported supplies, and meeting the international obligations of the United States. Under these circumstances, it is necessary for the Secretary to collect comprehensive information on the activities of the principal domestic participants in the U.S. sugar market.

Comments on the Interim Rule

Interested persons were provided 30 days to submit written comments concerning the interim rule. Written comments on the interim rule were received from six organizations:

1. American Sugar Cane League, a trade association representing all Louisiana processors of sugarcane and farmers representing 95 percent of State sugarcane output.
2. Sugar Cane Growers Cooperative of Florida, representing some 57 growers.
3. Hawaiian Sugar Planters' Association, representing 13 sugar plantation operations in Hawaii and the C&H Sugar Company which provides terminal storage, ocean transportation, refining, and marketing services.
4. U.S. Beet Sugar Association, representing 11 companies operating 36 factories accounting for 100 percent of U.S. beet sugar production.
5. U.S. Cane Refiners' Association.
6. A.E. Staley Manufacturing Company, a manufacturer of crystalline fructose and corn sweeteners.

In addition, meetings were held with company representatives of A.E. Staley on October 24, 1991; U.S. Cane Refiners' Association on October 28, 1991; and the U.S. Beet Sugar Association on October 29, 1991. Numerous telephone calls were made to industry representatives and sugar industry experts to clarify or verify information relating to the definitions and categories of data in the reporting forms. The major comments received and responses to them are as follows:

Comment (a)

A trade association repeated the industry suggestions, which had been made at the April 19, 1991, prior consultations, that USDA provide a single collection point for data on sugar.

Response

While some consolidation of data collection into ASCS has been accomplished, other data activities are impractical to transfer to ASCS. Other agencies in USDA are better advantaged to collect and disseminate information which relates to their program area. Among those data are crop production reports, which rely on surveys by the National Agricultural Statistics Service (NASS); trade data, relating to the Foreign Agricultural Service's (FAS) administration of sugar import programs; and cost of production data, based on periodic surveys by Economic Research Service (ERS). Data to be consolidated include NASS's *Sugar Market Statistics*, ERS's collection of beet sugar industry data for establishing regional loan rates and support levels (ASCS had already been receiving the data for cane sugar), and ERS's calculation of regional loan rates and support levels.

Comment (b)

Three respondents strongly objected to providing data on sugar supply, distribution, and processing capacity for individual plants within a company. Reasons cited were one or more of the following: providing plant data would be difficult, time-consuming, and unduly burdensome and the data would be proprietary.

Response

Data by plant would be helpful in analyzing the industry but are not absolutely required to carry out program management. Should there be compliance issues requiring such data, USDA could check into company records. One exception, however, is the need to collect production data by plant once a year in order to calculate regional loan rates.

Furthermore, in the case of physical processing capacity, there is no good reason why the data should not be provided. Such information by individual facility has been available from various sources, and it is merely a matter of requiring that such information be reported regularly so as to update and systematize the data. In order to reduce the reporting burden, the data will be requested only once a year.

Comment (c)

Two respondents asked that the reporting by cane refiners of receipts of raw sugar be on a State-by-State basis rather than by specific company. They claimed that reporting receipts by company would be burdensome and needlessly disclose proprietary information.

Response

Individual company data provide a cross-check on reports provided by individual cane processing companies and can help USDA ensure consistency of data. Cane refiners currently report receipts of raw sugar, by specific milling company, for the States of Louisiana and Texas (Texas has just one mill). However, receipts from Hawaii, Florida, and Puerto Rico are reported by State rather than by company, because the raw sugar from mills in those States is first transferred to a terminal before shipment to cane refiners. At the terminal, the raws are commingled and lose individual company identity by the time they are shipped to cane refiners. Accordingly, cane refiners will be asked to continue the established practice of reporting receipts by company for sugar from Louisiana and Texas, and by State terminals for sugar from Hawaii, Florida, and Puerto Rico.

Comment (d)

Three respondents objected to the interim rule's definition of raw sugar as that which tested less than 99.4 degrees by the polariscope (a measure of sucrose purity) and refined sugar as that which tested a minimum 99.4 degrees. It was indicated that refined sugar typically tests above 99.4 degrees, but that in any case refiners disagree as to the minimum polarity of refined sugar. All respondents said that the distinction between raw and refined should continue according to current practice; raw sugar is that which is to be further processed, and refined sugar is that which is not to be further refined or improved in quality. In short, refined sugar should be differentiated from raw on the basis of use rather than polarity.

Response

Typically, sugarcane is processed by a mill to produce raw sugar which is then further processed by a refinery into refined sugar. However, the purity of mill-processed sugar varies and some sugar, such as "plantation whites," has a high degree of purity. Some of the sugar produced by a mill may be used as direct-consumption sugar and not sugar for further processing. On the other hand, sugar of the same purity may be designated as raw because it is to be further processed. Accordingly, the established industry usage will be accepted and will be used for reporting purposes.

Comment (e)

The interim rule had included molasses (in terms of its sugar content) in the general definition of sugar because a new "desugaring" technology can extract sugar from molasses. Two respondents, however, state that only some of the molasses will be desugared and only when that sugar is available

should it be counted as part of the sugar supply.

Response

While the comment makes a good point, not all of the molasses should be excluded from the definition of sugar; specifically, edible molasses should continue to be defined as sugar. For sugar loan program purposes, USDA regulations have included edible molasses and cane syrup since the 1981 Farm Act, and such definition is continued in the 1990 Farm Act sugar loan program regulations, as well as the marketing assessment regulations. An insignificant amount of edible molasses (less than 1 percent of U.S. sugar production) and even less sugarcane syrup, is produced each year in the United States. Most of the edible molasses is produced by one company in Louisiana. Accordingly, the definition of sugar has been changed to include only edible molasses, and the definition of inedible molasses has been deleted.

Comment (f)

The interim rule requested the quantity of processed sugarcane and mill processing capacity be expressed in terms of net tons. One respondent objected to using net tons because, ever since the use of the core sampler method for testing sugarcane for sugar content in Louisiana, the processors no longer have the facilities to calculate trash content and convert gross tons processed into net tons. Another respondent, representing some of the Florida growers, also expressed preference for gross tons but, in subsequent discussion, indicated either measure was feasible.

Response

Gross tons would not be as meaningful a measure as net tons of sugarcane, and in the case of Hawaii where trash can account for some 40 percent of gross tonnage, the use of gross tons would render the data almost meaningless. The problem is unique to Louisiana whose producers strongly object to using net tons.

NASS currently estimates sugarcane production in all States in terms of net tons. In Louisiana, NASS receives a gross tons estimate from the American Sugarcane League, and the NASS County Agent estimates a trash percentage to get net tons of sugarcane. Accordingly, all States should report in net tons, except Louisiana. Because of the unique situation there, a procedure will be developed following the current process used by NASS to derive net tons for Louisiana.

Comment (g)

Two respondents considered the request for data on imported sugarcane and sugar beets to be unnecessary. In the case of cane, they contended that shipment over long distances would be too expensive and impractical because of rapid deterioration of the sugar (ignoring the possibility of shipment from Mexico). Furthermore, they said cane could not be shipped into the United States, because phytosanitary regulations would forbid it.

Response

Marketing controls, if activated, would apply only to domestically produced sugarcane and sugar beets. If those crops are able to enter the United States, the sugar produced from them should be identified. However, it turns out that phytosanitary regulations already prevent sugarcane from being imported. In the case of sugar beets, no such phytosanitary restraints exist and, in fact, small quantities have been shipped from Canada. As a result, data on imports of sugar beets will continue to be requested.

Comment (h)

The industry sought confirmation that the definition of the crop year would remain the same as that which has been used for the price-support loan program since 1982, namely production on a July 1 to June 30 basis.

Response

The definition of crop-year used for purposes of the sugar price support program, i.e., on the basis of a July-June crop year with the customary allowances in dating (such as for a continuous harvest that goes beyond June), will be used for purposes of the reporting and recordkeeping requirements.

Comment (i)

A trade association contended that data on liquid sugar and molasses are not really needed because liquid sugar would be included in the overall sugar figures, as would any sugar that might come from molasses.

Response

Liquid sugar data have been provided to USDA's *Sugar Market Statistics* for years and continue to be a useful category of sugar production and distribution. An emerging technology to de-sugar cane molasses and produce liquid invert syrup reinforces the need for data on liquid sugar.

Comment (j)

One crystalline fructose (CF) manufacturer contends that, when CF is used primarily for non-sweetener purposes, such quantity of CF should not have to be reported.

Response

Section 359a of the Agricultural Adjustment Act of 1938, as amended, requires the reporting of all distributions of CF and does not distinguish between sweetener and non-sweetener uses of CF. For that matter, neither does the statute make such a distinction for sugar which, like CF, has non-sweetener properties which are desirable in various uses. Even if one can identify the particular sales which are not primarily for sweetening purposes, the attribute of sweetness would still be part-and-parcel of CF and a factor in the purchase of it. Accordingly, all distributions of domestically manufactured CF from corn must be reported regardless of the intended use of the CF.

Comment (k)

One of the two manufacturers of crystalline fructose (CF) objected to providing detailed data on end-uses for CF, claiming that the statute does not require such specificity; it is needlessly burdensome, requiring a new information system to properly track and report such data; and it will have a significant anti-competitive effect because there are only two domestic manufacturers of CF and a relatively small volume and number of uses of the product now exist.

Response

The arguments against disclosure of detailed data on distribution of CF have merit, and accordingly only a total distribution figure will be required.

Comment (l)

A trade association commented that some companies keep records based on accounting periods that may vary somewhat from calendar months, and suggested that reporting be based on accounting periods which end closest to the completion of a calendar month instead of strictly at the end of the calendar month.

Response

Previous submission of data for USDA's *Sugar Market Statistics*, which reported on a quarterly basis, gave a slight leeway for the accounting period that was supposed to end every calendar quarter. A similar allowance would accommodate some companies

which carry accounts on a weekly basis, and permit them to close their accounts just before or just after a calendar month. CCC accepts this suggestion.

Comment (m)

Two respondents objected to providing data on average recovery rates, claiming that such information was proprietary and possibly misleading.

Response

CCC accepts this comment and has deleted this information requirement.

Comment (n)

Some respondents asked that they be provided at least 30 days after distribution of the revised forms before they are required to begin submitting such forms.

Response

Following the receipt of numerous oral and written comments on both the interim rule and the reporting forms, CCC determined that it would be necessary to postpone the dates for receipt of the October, November, and December reports from November 21, 1991, to January 31, 1992. Such action was taken by CCC in a final rule published in the **Federal Register** on November 22, 1991 (see 56 FR 59196). In addition, that final rule changed the due date for subsequent submissions from the 15th day after the end of the calendar month for which the data are to be reported, to the third Friday of the month following the month for which the data are to be reported.

This final rule provides a further extension of the due date for submission of the initial reports. Delays in revising the interim reporting forms to permit a more efficient and effective tracking of needed data have required that the submission of monthly reports for October 1991 through January 1992 data be postponed to 15 days after publication of this rule in the **Federal Register**, from the previous due date of January 31, 1992. The data for February 1992 and subsequent months prior to the month of publication of this rule in the **Federal Register** will be due the third Friday of the month following the month of publication of this rule. Data for the month of publication of this rule and for subsequent months will be due by the third Friday of the month following the month for which data are reported.

List of Subjects in 7 CFR Part 135

Crystalline fructose, Loan programs/agriculture, Marketing assessments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, the interim rule amending 7 CFR part 1435 which was published at 56 FR 47351 on September 19, 1991, is adopted as a final rule with the following changes:

PART 1435—SUGAR

1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa, 1359hh(a)(1), 1446(a); additional U.S. note 3(a) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS).

2. Section 1435.401 is revised to read as follows:

§ 1435.401 Definitions.

The definitions set forth in this section shall be applicable to terms used in this subpart.

ASCS means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

Cane sugar refiner means a person who processes raw cane sugar into refined crystalline sugar or liquid sugar. The same person may be both a "cane sugar refiner" and either a "sugarcane processor" or "sugar beet processor" or both.

Cane syrup means concentrated cane juice from which no sucrose has been extracted.

CCC means the Commodity Credit Corporation.

Crop year means the period beginning July 1 and ending June 30 of the following calendar year, with the customary allowance for a continuous harvest that goes beyond June. The "1991 crop" means sugar processed from domestically produced sugar beets or sugarcane harvested during the 1991 crop year. The "1991 crop" includes sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane harvested during the 1991 crop year.

Crystalline fructose means a monosaccharide and reducing sugar, manufactured from field corn, appearing as free-flowing white crystals with the chemical formula $C_6H_{12}O_6$, a molecular weight of 180.16, and meeting the specifications of the *Food Chemicals Codex* (Third Edition, as amended in Third Supplement, 1991) of the National Research Council.

Deliveries means a subcategory of *distribution*, consisting of sugar delivered to end-users for consumption as sugar or for use in products containing sugar, including sugar delivered to a manufacturer under the Sugar-Containing Products Re-Export Program.

Direct-consumption sugar means any sugar which is not to be further refined or improved in quality, whether such sugar is principally of crystalline structure or is liquid sugar, edible molasses, or cane syrup.

Distribution means the sale or other disposition of sugar or crystalline fructose, including (but not limited to) the forfeiture of sugar to the CCC and the disposition of sugar or crystalline fructose for retail sale, for further processing or refining, for production of alcohol or feed, or for exportation.

Edible molasses means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

Fiscal year means the year beginning October 1 and ending September 30.

Imports means sugar or crystalline fructose entered into the customs territory of the United States.

Invert sugar means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

Liquid sugar means a direct-consumption sugar which is not principally of crystalline structure and which contains, or which is to be used for the production of any sugars principally not of crystalline structure which contain soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 per cent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

Molasses means a thick syrup which is a byproduct of processing sugar beets or sugarcane, or of refining raw cane sugar, and in which sucrose or the sucrose equivalent of invert sugars, or both, account for less than 94 percent of the total soluble solids.

Person means an individual, corporation, association, marketing or processing cooperative, joint stock company, estate or trust, or other legal entity.

Plant capacity means the maximum capability, on a short tons per day basis, of a processing or refining facility to process sugar beets (cleaned and tared), sugarcane, and/or raw sugar.

Processing facility means a distinct physical facility, at a single location, which processes sugarcane or sugar beets into sugar.

Processing inputs means the quantity of raw materials (e.g., sugarcane, sugar beets, raw sugar, molasses, etc.) used in processing or refining operations.

Production means the output of beet sugar from the processing by sugar beet processors of domestically produced

sugar beets or sugar beet molasses; the output of cane sugar (including edible molasses and cane syrup) by sugarcane processors of domestically produced sugar cane or sugarcane molasses; or the output of sugar (including edible molasses) from the processing by cane sugar refiners of raw cane sugar or imported molasses.

Raw sugar means any sugar, whether or not principally of crystalline structure, which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing ninety-six sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing ninety-two or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing ninety-two sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization $-92)\times 0.0175]+0.93\} \times$ actual weight. For example, with respect to cane sugar testing ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above ninety-two degrees. For sugar testing less than ninety-two sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Receipts refers to the quantity of raw materials (e.g., sugarcane, sugar beets, raw sugar, refined sugar, liquid sugar, syrups, molasses, etc.) received by the processing or refining facility.

Refined crystalline sugar means white, crystalline sugar (including "high-polarity" sugar from raw cane mills) which is not to be further refined or improved in quality. Most direct-consumption sugar is in the form of refined crystalline sugar.

Refining facility means a distinct physical facility, at a single location, which processes raw sugar or imported molasses into refined sugar.

Stocks means inventory of sugar or crystalline fructose on hand at the beginning and at the end of the calendar month for which data are being reported, as appropriate.

Sucrose means a disaccharide having the chemical formula $C_{12}H_{22}O_{11}$.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and cane syrup.

Sugar beet processor means a person who commercially produces refined sugar, liquid crystalline sugar, or liquid sugar directly or indirectly from sugar beets (including sugar produced from sugar beet molasses). The same person may be both a "sugar beet processor", and either a "cane sugar refiner" or "sugarcane processor" or both.

Sugarcane processor means a person who commercially produces raw sugar or refined sugar directly or indirectly from sugarcane (including sugar produced from sugarcane molasses). The same person may be both a "sugarcane processor", and a "cane sugar refiner" or "sugar beet processor" or both.

3. Section 1435.402 is revised to read as follows:

§ 1435.402 Duty to report.

(a) (1) *Monthly Reports.* (i) Every sugar beet processor shall file, on a monthly basis, completed Forms CCC–831 and CCC–833, which accurately report each processor's imports and other receipts, processing inputs, production, distribution, and stocks.

(ii) Every sugarcane processor shall file, on a monthly basis, completed Forms CCC–832 and CCC–833 which accurately report each processor's imports and other receipts, processing inputs, production, distribution, and stocks.

(iii) Every cane sugar refiner shall file, on a monthly basis, completed Forms CCC–833 and CCC–835 which accurately report each refiner's imports and other receipts, processing inputs, production, distribution, and stocks.

(iv) Every manufacturer of crystalline fructose shall report, on a monthly basis, such manufacturer's total distributions of crystalline fructose.

(2) *Annual reports.* Every sugar beet processor, sugarcane processor, and cane sugar refiner shall file an annual report of the prior crop year production and current plant capacity of each processing and refining facility owned or operated by the processor or refiner.

(b) *Submission of reports.* (1) The initial month for which data are to be reported is October 1991, and the initial monthly reports for October 1991 through January 1992 must be received no later than August 5, 1992. The data for February 1992 and subsequent months prior to July 1992 will be due the third Friday of August 1992. Data for the month of July 1992 and for subsequent months must be received no later than the third Friday of the month following the month for which the data are reported.

(2) The initial annual report of production data, for the 1990 crop year, and current plant capacity data must be received no later than the due date for the February 1992 data. Subsequent annual reports must be received no later than the third Friday of March following the end of the crop year for which the production data are reported.

(3) Data reports shall be filed or delivered to the U.S. Department of Agriculture, ASCS, DAPA, room 3090–S, P.O. Box 2415, Washington, DC 20013 or transmitted to the FAX number provided on the report form.

Signed this 6th day of July 1992 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–17115 Filed 7–20–92; 12:01 pm]

BILLING CODE 3410–05–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[(Release No. 34–30929; File No. S7–25–91) (International Series Release No. 421)]

RIN: 3235–AF44

Final Temporary Risk Assessment Rules

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rules.

SUMMARY: The Securities and Exchange Commission is adopting Rules 17h–1T and 17h–2T (17 CFR 240.17h–1T and 17 CFR 240.17h–2T) under the Securities Exchange Act of 1934 (the "Exchange Act"). The rules are being adopted primarily pursuant to the authority conferred on the Commission by the Market Reform Act of 1990. Rule 17h–1T would require broker-dealers to maintain and preserve records and other information concerning certain of the broker-dealer's associated persons. The requirement to maintain and preserve information under Rule 17h–1T would extend to the financial and securities

activities of the holding companies, affiliates, or subsidiaries of a broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T would require broker-dealers to file with the Commission quarterly reports concerning the information required to be maintained and preserved under Rule 17h–1T.

DATES: The rules become effective September 30, 1992. See section IV. of the Supplementary Information section of this release for the temporary implementation schedule.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272–2904 or Roger G. Coffin, (202) 272–7375, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On August 30, 1991, the Commission proposed for comment temporary Rules 17h–1T and 17h–2T, which, together with proposed Form 17–H, would establish a risk assessment recordkeeping and reporting system for broker-dealers.[1] The Rules were proposed pursuant to the authority conferred on the Commission by the Market Reform Act of 1990 (the "Reform Act"), which added section 17(h) to the Exchange Act.[2] Section 17(h) provides the Commission with specific authority to obtain information regarding certain activities of broker-dealer affiliates and augments the Commission's authority with respect to matters relating to the financial responsibility of broker-dealers.

Section 17(h) requires broker-dealers to maintain and preserve such risk assessment information as the Commission by rule prescribes with respect to those associated persons of the broker-dealer whose "business activities are reasonably likely to have a material impact on the financial and operational condition" of the broker-dealer, including the broker-dealer's "net capital, its liquidity, or its ability to finance its operations".[3] The statute provides that the records should concern the broker-dealer's "policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities" of its material associated persons and should "describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding" of associated persons whose business activities are reasonably likely to have a material impact on the broker-dealer".[4] In addition, the Reform Act authorizes the Commission to require broker-dealers to file summary reports of the information and records maintained pursuant to the recordkeeping provisions.[5]

The Commission's proposal contained two rules. Proposed Rule 17h–1T set forth the specific recordkeeping requirements applicable to broker-dealers and provided guidelines to be used in establishing which associated persons of the broker-dealer are subject to the recordkeeping and reporting requirements.

Included in the recordkeeping requirements were risk management policy information, financial data, including consolidating and consolidated financial statements, securities and commodities position data, and other categories of financial and securities related information. Proposed Rule 17h–2T would require broker-dealers to file quarterly reports on proposed Form 17–H.

Proposed Form 17–H contained general instructions for use in reporting information and included a separate section of line items to be used in reporting numerical data to the Commission. Recognizing that the proposal would establish new recordkeeping and reporting burdens on members of the securities industry, who in the past have been required to report on the financial and operational condition of the registered entity only, the Commission requested public comment on the scope of the proposal, the burdens of complying with the rules, as well as the specific recordkeeping and reporting requirements contained therein.

B. Brief Summary of Comment and Commission Action

In response to the request for comment, the Commission received 63 letters addressing the proposed risk assessment rules. Generally, the commentators criticized the breadth of the proposal and the level of detail in the information required to be maintained and reported. Many commentators urged the Commission to reduce the potential universe of broker-dealer affiliates as to which the broker-dealer would be required to maintain records. Other commentators addressed the application of the proposed rules to foreign entities. Many of these writers suggested that foreign affiliates operating under a regulatory scheme should be exempt from the proposed rules. Finally, the commentators suggested numerous technical changes to the recordkeeping and reporting requirements, many of which the Commission believes are helpful and have been incorporated into the rules being adopted today. Specific aspects of the comments are discussed in greater detail in the applicable sections of this release.

In summary, today the Commission is adopting, with certain modifications, Rules 17h–1T and 17h–2T, together with Form 17–H. The general approach taken in the rules being adopted today remains as proposed. Broker-dealers will be required to designate, using the guidelines set forth in Rule 17h–1T and subject to Commission oversight, Material Associated Persons for the purposes of Rules 17h–1T and 17h–2T. Broker-dealers will then be required to maintain certain information concerning the financial and securities activities of each Material Associated Person and will be required to file quarterly reports with the Commission on Form 17–H.

The rules being adopted today differ from the proposal in several respects. The Commission has undertaken to address the primary objection to the proposal, which was the burden imposed by the detailed information required by the risk assessment rules. To address this issue, the amount of information required to be maintained has been reduced in those areas where the information would not significantly assist the Commission and especially where it could be costly for a broker-dealer to obtain. The Commission believes that the cumulative effect of the modifications to the proposal and to the amount and format of the data required will significantly reduce the burdens associated with complying with the new rules.

The revisions to the proposed rules also incorporate certain of the commentators' suggestions with respect to the reporting and recordkeeping requirements. Additionally, special provisions for certain domestic and foreign entities have been added. Finally, the rules incorporate certain of the commentators' suggestions concerning the exemptive provisions; as proposed, the rules would exempt broker-dealers that maintain less than $5 million in capital and which do not

---

[1] Exchange Act Release No. 29635 (August 30, 1991); 56 FR 44014, (September 6, 1991).

[2] Pub. L. No. 101–432, 104 Stat. 963 (1990); 15 U.S.C. 78q(h).

[3] *See* section 17(h)(1) of the Act.

[4] *Id.*

[5] *Id.*

carry customer accounts. The final rules raise this exemption to $20 million.

The Commission is adopting temporary rules to commence the formal information gathering process envisioned by the Market Reform Act. The Commission believes it would be appropriate, after some experience is gained with the information obtained pursuant to the temporary rules, to evaluate the operation of the risk assessment rules. The Commission would require the Division of Market Regulation to prepare a study evaluating the effectiveness of the rules. The report will be issued within 90 days after the rules have been fully operative for two years, and will be issued for public comment. Once the industry has commented, and the Commission has made its own evaluation, the Commission will decide what, if any, further refinements or modifications are appropriate.

Because the Commission believes it is important to commence the risk assessment program as soon as possible, the rules will become effective pursuant to a temporary implementation schedule. Pursuant to this schedule, broker-dealers will be required to maintain the information required by paragraphs (a)(1)(i) (the organization chart), (a)(2)(ii) (risk management policy information) and (a)(1)(iii) (disclosure of litigation) of Rule 17h–1T commencing September 30, 1992. Rule 17h–2T will require broker-dealers to file this limited information with the Commission on or before October 31, 1992. The rules will become fully effective on December 31, 1992.

II. Analysis of Public Comments

The general areas of the Commission's proposal that drew the attention of the commentators may be described as follows: (1) Which broker-dealer affiliates should be covered by the rules and the amount of information required to be kept by a broker-dealer concerning each covered affiliate; (2) the application of the rules to foreign entities; (3) the treatment of affiliates which are regulated entities (including domestic and foreign banks, insurance companies and futures commission merchants); (4) the rules' general exemptive provisions; and (5) technical recordkeeping, reporting and filing issues.

A. Scope of Risk Assessment Rules

As noted above, section 17(h) requires broker-dealers to keep records with respect to the financial and securities activities of those associated persons of the broker-dealer whose "business activities are reasonably likely to have a material impact" on the broker-dealer's financial and operational condition.[6] Section 17(h) does not indicate which associated persons of a broker-dealer should fall under this statutory standard; however, the legislative history accompanying the Reform Act suggests a flexible facts and circumstances approach.[7]

To incorporate this approach, proposed Rule 17h–1T contained several factors to be used by broker-dealers in determining which affiliates are subject to the rules. For the purposes of the risk assessment rules, affiliates subject to the rules are known as "Material Associated Persons."

The first factor set forth in Rule 17h–1T is the nature and proximity of the relationship between the registered firm and an associated person. Second is the overall funding needs of the broker-dealer and the degree, if any, to which the broker-dealer is financially dependent upon the associated person. Where a broker-dealer relies on the commercial paper or other unsecured credit of the holding company for financing, the broker-dealer would be materially affected by an acceleration or call by holders of such obligations because of events at the holding company level. Third is the degree to which the broker-dealer or its customers rely on the associated person for operational services or support. Merely offering products or services to the customers of broker-dealers, such as insurance products to brokerage customers will not, in and of itself, rise to the level of materiality called for by the risk assessment rules. However, if a broker-dealer relies on the associated person for significant operational facilities or services, the activities or financial difficulties of the associated person may well have a material impact on the broker-dealer. Fourth is the level of risk present in the types of activities of the broker-dealer or its associated person. Associated persons engaged in activities such as transactions in derivative products, merchant banking or venture capital activities are more likely to have a material impact on the broker-dealer than associated persons that engage in less risky activities. The final factor is the extent to which the associated person has the ability or the authority to cause a withdrawal of capital from the broker-dealer. These factors were intended to amplify the statutory standard and to suggest some, but not all, of the criteria that may be relevant to a determination of materiality.

Because of the complexity and diversity of the various holding companies which own broker-dealers, the Commission's proposal would leave the initial determination of which associated persons are Material Associated Persons up to the reporting broker-dealer, subject to Commission oversight. The Commission believes this method remains the most practical way to implement the recordkeeping and reporting provisions of the risk assessment rules and is incorporating this approach into the final rules. The commentators raised a number of issues with regard to the designation of Material Associated Persons under the proposed rules.

1. Financial Strength of the Affiliate

Several commentators urged the Commission to incorporate other factors, such as the associated person's rating by a rating agency, the financial strength of the broker-dealer, or the financial strength of the associated person into Rule 17h–1T. According to this argument, a parent or affiliate in sound fiscal health is less likely to have a material impact on the financial and operational condition of the associated broker-dealer than a parent experiencing financial difficulties.

While a well-capitalized parent or affiliate can be a source of strength to the registered entity, the Commission does not believe that the financial strength of the broker-dealer or an associated person should be relevant in designating Material Associated Persons under the risk assessment rules. The Commission's risk assessment program is designed to provide information regarding significant broker-dealer affiliates on a regular and continuing basis. It would be insufficient for the Commission to receive an incomplete picture of any single holding company structure, especially in light of the fact that the financial strength of the parent may rest behind the broker-dealer's credit rating or access to the commercial paper market. The Commission's risk assessment program is designed to enable the Commission to monitor the financial and securities activities of all associated persons whose business activities are, by themselves, reasonably likely to have a material impact on the broker-dealer. A broker-dealer could be impacted by a significant and sudden change in the fiscal position of a key affiliate or parent, despite the prior

---

[6] The term "associated person of a broker or dealer" is defined in Section 3(a)(18) of the Exchange Act. For the purposes of the risk assessment rules, the term does not include natural persons.

[7] *See* H. Rep. at 27.

apparent financial stability of that entity.

2. Factors in Designating Material Associated Persons

The commentators also urged the Commission to refine or restrict the factors set forth in proposed Rule 17h–1T concerning the designation of Material Associated Persons. Essentially, these commentators suggested that the rules explicitly state that holding companies not primarily engaged in financial or securities activities should not be considered Material Associated Persons. While there may be instances where the activities of an ultimate parent or affiliate are not material to the financial condition of the broker-dealer, particularly if the parent or affiliate's primary business does not involve financial or securities activities, the Commission does not believe it would be appropriate to draw a bright line test in this regard. Instead, a facts and circumstances analysis is required. The first factor set forth in Rule 17h–1T, the nature and proximity of the relationship between the broker-dealer and the associated person, is intended to encompass these types of issues.

To illustrate, certain broker-dealer holding companies consist of at least two layers. The first level usually includes the direct parent of the broker-dealer and a number of related financial services entities. As stated in the proposing release, the Commission believes, absent very unusual circumstances, that these entities should be designated Material Associated Persons. This is particularly true in light of the fact that many broker-dealers carry potentially risky or highly leveraged positions, including interest rate agreements and over-the-counter derivative products in these first-tier affiliates.

The next layer may consist of a corporate holding company which has a controlling interest in the broker-dealer holding company and often one or more other intermediate holding companies that engage in businesses independent of the broker-dealer. The scope of the final risk assessment rules may, in some instances, extend to certain of these entities, especially if the broker-dealer depends on any of these companies as a source of funding. Alternatively, intermediate holding companies or an ultimate parent company may meet the material impact test. The financial distress or a potential bankruptcy filing by such an entity could directly threaten the broker-dealer's ability to obtain credit or might interfere with the broker-dealer's access to the clearance and settlement system. If the day-to-day operations of the broker-dealer are or could be affected by the activities of the affiliate or parent, then that affiliate is most likely a Material Associated Person. On the other hand, there may be situations where, after an evaluation of all the relevant facts and circumstances, it appears that associated persons in the upper levels of the holding company hierarchy are likely to have only a remote impact on the financial and operational condition of the broker-dealer, and should not be designated Material Associated Persons. If the ultimate parent in a multi-tiered holding company is primarily involved in non-financial and non-securities activities, such as retailing or manufacturing, the Commission believes the parent should not, absent unusual circumstances, be designated a Material Associated Person.

3. Use of Exchange Act Reports

Finally, several commentators suggested that the Commission create a separate category for Material Associated Persons that are subject to periodic Exchange Act reporting obligations. These public Material Associated Persons, argued the commentators, should be permitted to submit copies of reports on Forms 10–K and 10–Q for risk assessment purposes. While the Commission's goal is to incorporate as much readily available information as possible into the risk assessment program, it does not believe that Exchange Act reports, without additional disclosure, can be used by broker-dealers in reporting on a Material Associated Person. Exchange Act reports are public disclosure documents that do not contain the specialized data required to enable the Commission staff to adequately assess the overall financial condition of a holding company and the potential impact its key members can have on a registered broker-dealer. Moreover, the Commission needs to have uniformity in the reports filed under the rules. Even though some of the information required by Form 17–H is contained in Forms 10–K and 10–Q, the Commission does not believe it would be unduly burdensome to reformat it on Form 17–H.

B. Treatment of Regulated Entities

Proposed Rules 17h–1T and 17h–2T contained special provisions for associated persons or brokers or dealers subject to the regulatory supervision of certain federal and state regulatory authorities. These provisions were designed to diminish the need for broker-dealers to create an additional set of records where records substantially similar to those required by the risk assessment rules are created for the use of other federal or state regulators. The Commission is adopting the special provisions, with some refinements, as they apply to banks and insurance companies, and is adding a section for Material Associated Persons subject to the regulation of the Commodity Futures Trading Commission.

1. Banks

Proposed Rule 17h–1T provided that a broker-dealer would be deemed to be in compliance with the rule's recordkeeping requirements with respect to a Material Associated Person subject to the supervision of a federal banking agency if the broker-dealer maintained copies of the reports filed by the associated bank with its federal banking regulator. Proposed Rule 17h–2T permitted the broker-dealer to furnish copies of such reports to the Commission. The Commission is adopting these provisions substantially as proposed. Several commentators requested clarification on the application of these provisions to domestic and foreign banks.

One commentator suggested that the rules should be clarified to specify which forms filed with bank regulators need to be maintained and filed by the broker-dealer. In addition, several commentators requested clarification with respect to the application of these provisions to foreign banks subject to federal banking regulation.[8]

Proposed Rules 17h–1T and 17h–2T would require the broker-dealer to maintain and file copies of all the reports filed with a federal banking regulator. After analyzing the comments and the various federal banking reports, the Commission has determined that not all banking reports need be filed with the Commission as part of the risk assessment program. Rather, the rules being adopted today specify that the broker-dealer must maintain copies of all reports filed by the bank Material Associated Person to comply with Rule 17h–1T. However, Rule 17h–2T specifies that domestic banks will only be

[8] One commentator, noting the comprehensive scheme of federal banking regulation, suggested that Material Associated Persons that are banks should be exempt from the rules altogether. Despite this regulatory scheme, Congress provided the Commission with the authority to request information from banks for risk assessment purposes. The Commission believes that the risk assessment program would not be complete if such information is not obtained. As envisioned in the Reform Act, the Commission will obtain such information in the form presented to federal banking authorities.

required to file copies of Forms FY–9C and Form FR Y–6 with the Commission.[9] The Commission believes these forms are the only bank reporting forms essential to risk assessment.

The proposed rules did not directly address the application of the rules to foreign banking organizations which are subject to regulation by U.S. banking regulators. The commentators, using an argument based on the language of the Reform Act and the legislative history, asserted that the intent of Congress was to include foreign banks that are subject to U.S. banking regulation under the special provisions for banks contained in the Reform Act and incorporated into the Commission's rules.[10] After an examination of the content of these reports, and a comparison of their content to the reports filed by U.S. banks, the Commission has determined to permit foreign banking organizations that file reports under the banking statutes specified in the rules to file copies of their reports in the same fashion as domestic banks.

2. Insurance Companies

The Commission's proposal contained special provisions for insurance companies that are Material Associated Persons under the rules. A broker-dealer with an insurance company Material Associated Person would satisfy the recordkeeping requirements by maintaining copies of the annual and quarterly reports filed by the parent insurance company with the state insurance regulator of the parent's domiciliary state. A broker-dealer designating a stock insurance company as a Material Associated Person would be required to, in addition to maintaining state insurance reports, provide copies of the filings the insurance company makes under sections 13 or 15 of the Exchange Act, together with filings made under the Investment Company Act of 1940. For all other insurance companies, the broker-dealer will be required to file copies of the reports prepared for state regulatory use. Two commentators discussed the provisions proposed for insurance companies.

One commentator suggested that brokers or dealers associated with a mutual insurance company Material Associated Person should be exempt from the rules except to the extent that they should be required to file the annual and quarterly reports filed by the insurance company with state regulators. The Commission believes that it is appropriate to have access through the broker or dealer to all those reports filed by insurance company Material Associated Persons. By requiring the broker-dealer to maintain all reports filed, the Commission is assured of prompt access to the information contained therein when necessary.

Another commentator noted that while all state insurance regulators require the insurance companies subject to their authority to file annual reports, only a limited number require quarterly statements while the risk assessment rules require quarterly disclosure. Although this commentator pointed out that states with quarterly filing requirements include the major markets for insurance companies, and that the major insurance companies therefore file quarterly reports, the Commission has a strong interest in receiving quarterly reports. Therefore, the rules provide that, in the event an insurance company does not prepare quarterly reports for a state, the associated broker-dealer must maintain the records required by Rule 17h–1T and file a Form 17–H on a quarterly basis. The commentator also indicated that reports are filed on forms adopted by the National Association of Insurance Commissioners, not on forms prescribed by the insurance company's domiciliary state. The text of the rules has been changed to reflect that distinction and to indicate that the reports are to be filed regardless of whom they are filed with at the state level. In conclusion, the Commission is adopting the provisions with respect to insurance companies as proposed with the clarification discussed above.

3. Futures Commission Merchants

The Commission has added a new provision to the rules adopted today with respect to Material Associated Persons subject to the supervision of the Commodity Futures Trading Commission (the "CFTC"). Pursuant to this section, a broker-dealer will be deemed in compliance with the recordkeeping and reporting requirements if it maintains and files copies of Forms 1 FR–FCM or 1 FR–IB filed by the Material Associated Person. The Commission believes that it is appropriate to add these provisions because entities regulated by the CFTC are subject to recordkeeping, reporting, and supervisory requirements similar to those imposed by the Commission on broker-dealers.

C. Application of Rules to Non-Domestic Entities

Proposed Rules 17h–1T and 17h–2T would require registered broker-dealers to make and keep records with respect to all of their Material Associated Persons, regardless of the nationality or regulatory status of such Material Associated Person. In order to assess the impact of these requirements on multi-national conglomerates, the Commission's proposal specifically requested comment on the application of the risk assessment rules to foreign entities. In response, several U.S. subsidiaries of foreign firms, together with a number of foreign regulatory authorities, commented on the proposed rules.

The foreign commentators made the following suggestions. First, noting that many non-domestic Material Associated Persons are subject to the regulatory supervision of a foreign regulator, the commentators urged the Commission to exempt altogether any Material Associated Person subject to foreign regulation. As an alternative, the commentators requested that the Commission rely on the home country regulator of the Material Associated Person for assurances of the entities' financial soundness. In connection with this approach, the commentators urged the Commission to develop additional and more extensive information sharing agreements with international regulatory organizations in order to create a global risk management environment that primarily relies on the home country regulator of an international enterprise.

The Commission believes in the principle of cooperation and information sharing among financial and securities regulators. However, the Reform Act requires the Commission to promulgate rules requiring broker-dealers to report on the financial condition of all affiliates that could have a material impact on the U.S. registered entity. In today's global marketplace, that impact could just as easily be caused by a non-domestic entity as a domestic one. In light of the Congressional mandate in this area, the Commission does not believe it is appropriate to exempt foreign entities from the application of the risk assessment rules, even if a foreign firm

[9] The Commission notes that the text of the Reform Act stated that broker-dealers would be permitted to file copies of reports filed by a bank pursuant to section 8 of the Bank Holding Company Act of 1956. Section 8 of that Act refers to penalties; the correct citation should refer to section 5 of the Bank Holding Company Act, which refers to reporting obligations. The rules have been modified to correct this error.

[10] The proposed rules contained special provisions for banks "subject to examination by, and the reporting requirements of a Federal banking agency." The text of the Reform Act refers to the "examination by, or the reporting requirements of a Federal banking agency." The final rules have been revised to track the statutory language.

is regulated in its home country. Instead, the Commission has determined to adopt the approach suggested by certain commentators, which the Commission believes will enable the Commission to properly discharge its regulatory obligations while at the same time affording deference to the existence of foreign banking and securities regulators.

In a new section added to Rules 17h–1T and 17h–2T, a broker-dealer will be allowed to maintain and file reports prepared by a Material Associated Person for a Foreign Financial Regulatory Authority as that term is defined in section 3(a)(51) of the Act in lieu of having to prepare a Form 17–H.[11] The Commission believes this approach will not be unduly burdensome for foreign entities because the broker-dealer will be permitted to file copies of foreign regulatory reports directly with the Commission. The Commission notes that the treatment accorded to entities regulated by foreign authorities is similar to that accorded to regulated domestic entities. In effect, the Commission is not imposing any additional burdens on any regulated entity other than requiring an English translation of reports already produced.

Under the rules adopted today, where a Material Associated Person is subject to the regulatory supervision of a Foreign Financial Regulatory Authority, the broker-dealer may maintain and file copies of the reports produced for that regulator.

D. Exemptions

In order to create a risk assessment program that both deploys the Commission's resources in a cost-effective manner and focuses in on the segment of the securities industry most likely to have a significant impact on the operation of the markets or on investors, proposed Rules 17h–1T and 17h–2T contained three exemptive provisions. The first would permit individual broker-dealers to apply for an exemption. Section 17(h) of the Act directs the Commission to consider in the exemptive process a number of factors that were contained in the proposed rules. Although the Commission believes it is appropriate for the Commission to consider exemptive applications from individual broker-dealers, because the factors for this general exemption are set forth in the text of the statute, it is unnecessary to repeat them in the text of the rules. Therefore, the language contained in the proposed rules duplicating the statutory language will not be repeated in the rules.

The second category of exemption contained in Rules 17h–1T and 17h–2T would exempt limited purpose mutual fund brokers who are exempt from the provisions of the customer protection rule, Rule 15c3–3 pursuant to paragraph (k)(1) thereof.[12] This category would include the firms associated with insurance companies that are registered with the Commission as broker-dealers in order to offer variable annuity and other related products. Because the Commission believes these limited purpose firms pose limited systemic or customer risk and are beyond the intended scope of the Reform Act, this aspect of the proposal is being adopted. This exemption will exempt these firms, regardless of the amount of capital they maintain.

The third category of exemption contained in the proposed rules would also have exempted broker-dealers that maintain capital of less than $5 million and which do not carry customer accounts. The commentators who discussed this exemption generally agreed that the $5 million capital threshold was too low. Alternatives ranged from $25 to $100 million in capital or a sliding scale approach correlating the amount of capital with the nature and scope of the risk associated with different activities. Several commentators suggested that the rules exempt all but the largest 50 to 75 broker-dealers. Virtually all the commentators opposed the condition that would cause all broker-dealers that hold customer funds or securities or carry customer accounts to be subject to the rules.

The Commission believes that, especially in the initial phases of the risk assessment program, caution is warranted in the setting of the exemptive provisions in the risk assessment rules. The Commission does conclude, however, that a refinement can be made to this exemptive provision that will reduce the overall number of subject broker-dealers without a corresponding trade-off in risk. Therefore, the rules being adopted today raise the $5 million to $20 million except as to firms that hold customer assets (unless they maintain less that $250,000 in net capital). Excluded also would be broker-dealers that clear customer trades but do not hold funds or securities for customers except to facilitate transactions and only for the time necessary to complete the transaction.

As noted, as proposed, all firms that carry customer accounts would be covered by the rules. The commentators objected to this aspect of the rules because it would subject certain firms with minimal capital to the recordkeeping and reporting requirements solely because they carry customer accounts. The Commission considers this to be a valid point which can be addressed by putting a "floor" on these firms. Accordingly, the rules have been revised to limit their application to those carrying firms that maintain in excess of $250,000 in capital. Thus, all broker-dealers that carry customer accounts who maintain capital in excess of $250,000 would be subject to the rules.

A review of the capitalization of the securities industry reveals that, of the approximately 5,600 broker-dealers that conduct a public business, approximately 600 firms clear and carry the accounts of customers. Of this number, approximately 435 firms have capital in excess of $250,000. Together with firms that maintain in excess of $20 million, today's action would subject approximately 630 firms to the risk assessment rules. However, Schedule I to the FOCUS Report requires broker-dealers to indicate whether or not the firm is a subsidiary of a parent which is not a registered broker-dealer. From this item an estimate of how many broker-dealers are part of a holding company structure (and could have Material Associated Persons) can be achieved. The most recent data from Schedule I shows that 280 broker-dealers indicated they were a subsidiary of a non-broker dealer. This data indicates that the actual number of broker-dealers that will be required to report on their Material Associated Persons will be considerably smaller than the

[11] Section 3(a)(51) of the Act defines a "foreign financial regulatory authority" to mean "any (A) Foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above."

[12] These broker-dealers are exempt from the provisions of Rule 15c3–3 pursuant to paragraph (k)(1) thereof. They must limit their activities to the purchase, sale, and redemption of redeemable securities of registered investment companies or of interests or participation in an insurance company separate account; whether or not registered as an investment company; the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies.

approximately 630 firms potentially subject to the rules. Finally, while the staff plans to focus its efforts on the largest 50 to 75 broker-dealers, in the event of a problem with a firm that carries or holds customer accounts, the Commission and its staff will have access to this retained data and will be able to focus more promptly on customer exposure.

III. Final Risk Assessment Rules

A. Recordkeeping and Reporting Requirements

Proposed Rule 17h–1T would require broker-dealers to maintain and preserve two general categories of information concerning each Material Associated Person of the broker-dealer. The first category concerned the holding company's organization and risk management policies. The second involved the financial condition of the organization, including financial statements together with specialized categories of financial and securities activity related data, such as information concerning interest rate swaps, financial instruments and real estate ventures. Proposed Rule 17h-2T would require broker-dealers to file quarterly reports of the information required to be maintained by Rule 17h–1T.

The commentators to the Commission's proposal objected to the amount of information required to be maintained under proposed Rule 17h–1T. Moreover, the commentators argued that the level of detail required by proposed Form 17–H was excessive and beyond what the Commission requires for its regulatory purposes. The Commission is sensitive to the concerns articulated by the industry, and in adopting the risk assessment rules, is reducing, where possible, the recordkeeping and reporting burdens imposed by the rules. In addition, many of the commentators' suggestions with respect to the specifics of the proposal are being incorporated into the rules as adopted today.

1. Organization and Risk Management Policies

(a) *Organizational chart.* Paragraph (a)(1)(i) of Rule 17h–1T will require a broker-dealer to maintain an organizational chart of the holding company structure. The broker-dealer is required to indicate which associated persons of the broker-dealer are deemed to be Material Associated Persons. Associated persons that exist solely for tax reasons or that are shell companies that produce little or no revenue may either be omitted from the chart or combined into a single entry to reduce the number of entries. As proposed, paragraph (a)(1)(i) would have required the maintenance of a flowchart compiled during the audit process. Several commentators pointed out that certain organizations either do not prepare flowcharts, or prepare them on a business segment rather than a legal entity basis, as the proposal would require. Based in part on the comments, the Commission has decided to eliminate the flowchart requirement.

Proposed Form 17–H specified that the organizational chart was to be filed in the broker-dealer's first risk assessment filing and at each year-end. Quarterly updates would be required only where a significant change has occurred in the information on file with the Commission. The Commission is adopting these filing requirements as proposed.[13]

Form 17–H has been revised to conform to paragraph (a)(1)(i) and no longer calls for a narrative discussion concerning the criteria used in selecting Material Associated Persons, the business lines conducted, and the names of the chief executive, operating financial officers of each Material Associated Person. These requirements were burdensome, and the Commission can obtain this information on an ad hoc basis as needed. Form 17–H will require the name and telephone number of a contact person at the broker-dealer who will be available to answer questions concerning the information reported therein, including the holding company structure and the criteria used in designating Material Associated Persons.

(b) *Risk management policies.* As proposed, paragraphs (a)(1) (ii) through (iv) would require a broker-dealer to maintain certain risk management policies for itself and each Material Associated Person. The Commission has reorganized these provisions into a single revised paragraph. As revised, the new paragraph no longer requires policies concerning credit controls and collateral procedures.[14] As adopted, Form 17–H will require a broker-dealer to file its policy information only in the first filing with the Commission; quarterly updates will be required only where a material change has occurred in the information on file with the Commission.

In addition, a number of commentators argued that the policies required by the rules should be the policies of the broker-dealer only, and not each Material Associated Person. The Commission agrees that this clarification is warranted. Therefore, the proposal has been amended to state that the policies required to be maintained under Rule 17h–1T and filed under Rule 17h-2T should be the broker-dealer's policies only. Additionally, the final rules require the broker-dealer to maintain policies for monitoring and controlling financial and operational risks to itself based on the activities of its Material Associated Persons.

Finally, some commentators were unsure whether the Commission's proposal instituted an affirmative burden to create policies and procedures in the risk management area if none previously existed. The Reform Act provided the Commission with authority to monitor existing procedures for controlling systemic risk in the securities industry. If a firm operates without the policies referred to in the rules, it will be sufficient for risk assessment purposes for the broker-dealer to document, in writing, the absence of such policies.

(c) *Material legal proceedings.* Proposed Rule 17h–1T would require broker-dealers to keep records that describe all material pending legal proceedings to which the broker-dealer or any Material Associated Person is a party, or to which any of its property is subject and that would be required to be disclosed under GAAP. The commentators requested clarification on the application of this paragraph. As revised, new paragraph (a)(1)(ii) will require broker-dealers to maintain a record of material legal proceedings that would be required to be disclosed under GAAP on a consolidated basis looking at the organization as a whole. The references to the form and content of Item 103 of Regulation S–K have been deleted. Rule 17h-2T and Form 17–H will require this information to be filed in the first Form 17–H delivered to the

---

[13] Under the temporary implementation schedule set forth in this release, broker-dealers will be required to furnish an organizational chart 30 days after the initial effective date of the rules. Because the rules require broker-dealers to file the organizational chart in each year-end Form 17–H, broker-dealers operating on a calendar year end would technically be required to file another chart in the December filing. For the purposes of the phase-in of the rules, any broker-dealer filing an organizational chart under the temporary implementation schedule need not file the chart a second time in the first year-end filing unless a material change has occurred.

[14] The Commission notes that the information regarding capital adequacy formerly contained in paragraph (a)(1)(vi) of proposed Rule 17h–1T has been incorporated into the revised paragraph (a)(1)(ii). Proposed Item 4 of Form 17–H, dealing with capital adequacy information, has been deleted as unnecessary.

Commission, with quarterly updates only if necessary.

2. *Financial information.* As noted above, the second general category of risk assessment information required to be maintained by Rule 17h–1T and filed on Form 17–H pursuant to Rule 17h-2T will include the financial data necessary to assess the risks to a registered firm caused by the activities of its Material Associated Persons. The Commission is adopting these provisions in modified form to respond to many of the commentators' suggestions.

(a) *Financial statements.* As the Commission stated in its proposal, the information contained in the financial statements required by the rules will be one of the most important elements of the risk assessment program. This data will enable the Commission staff to evaluate the broker-dealer's position in the holding company hierarchy as a whole, and will give an overview of the financial condition of the organization.

As proposed, Rule 17h–1T would require broker-dealers to make and keep consolidating and consolidated balance sheets, income statements and cash flow statements for the broker-dealer and each Material Associated Person prepared in accordance with GAAP. Form 17–H contained various instructions for guidance in reporting the financial data to the Commission. Specifically, Form 17–H required the financial statements to be prepared in the form and content specified by Regulation S–X. Proposed Form 17–H also required a reconciliation to U.S. GAAP in the event that the financial statements were prepared in accordance with a comprehensive set of accounting principles other than U.S. GAAP.

Primarily, the commentators objected to the burdens imposed by the rule's requirement to present financial data in the form required by Regulation S–X. Broker-dealers that are non-public companies, or that have non-public Material Associated Persons, argued that the imposition of the S–X standards would, in essence, require the firms to develop new accounting and legal infrastructures for the sole purpose of complying with the Commission's risk assessment rules. In proposing this requirement, the Commission did not intend to impose unnecessary and costly burdens on those entities not otherwise subject to the requirements of Regulation S–X. Rather, the Commission intended to provide guidance regarding the form and content of the necessary financial disclosure. Therefore, in view of the opposition to this requirement, and the burdens cited by the industry in complying, the Commission has decided to revise the requirements for financial disclosure under the rules. The revised rules and form will require consolidated and consolidating financial balance sheets, income statements and statements of cash flows prepared in accordance with GAAP and without reference to Regulation S–X. Additionally, the requirement for a reconciliation to U.S. GAAP has been deleted. Entities using a set of accounting principles other than U.S. GAAP will be required to disclose what the accounting principles are, but will not be required to reconcile the numbers to U.S. GAAP.

Additionally, several commentators requested clarification as to whether, in the preparation of the consolidating financial statements, the rules would require separate stand-alone financial data for each Material Associated Person. The Commission has revised paragraphs (a)(1)(iv) and (a)(1)(v) of Rule 17h–1T and the corresponding sections of Form 17–H to specify that the consolidating and consolidated balance sheets, income statements, and statement of cash flows are required for the broker-dealer and the broker-dealer's ultimate holding company parent. Separate consolidating and consolidated information is not required for each Material Associated Person included in the consolidating and consolidated information.

(b) *Aggregate securities and commodities positions.* Proposed Rule 17h–1T would require broker-dealers to maintain records of the amount at the end of the quarter, and the highest and lowest amounts during the quarter, of securities and commodities positions held by each Material Associated Person, including a separate listing of each position that exceeds a defined Materiality Threshold at any time during the quarter. Proposed Rule 17h–1T defined the term Materiality Threshold to mean the greater of: (A) $100 million; or (B) 10 percent of the broker-dealer's tentative net capital or 10 percent of the Material Associated Person's tangible net worth, whichever is greater. Proposed Form 17–H set forth a schedule to be used in reporting this data to the Commission.

Generally, the commentators recognized the need for the Commission to compile and analyze position data. The writers did, however, offer a number of suggestions that the Commission believes are helpful and that can be incorporated into the final version of the rules being adopted today. Specifically, the Securities Industry Association (the "SIA") recommended that the highs and lows for single position tracking requirements in the rule should be determined on the basis of month-end figures, rather than daily figures, which would impose a costly and continuous monitoring requirement. The Commission agrees that month-end reporting would be sufficient for risk assessment purposes, and has modified the rule accordingly. As revised, Rule 17h–1T will require broker-dealers to maintain aggregate position data at quarter end, and at month end if greater than quarter end. Single position tracking for the purposes of monitoring positions that are larger than the Materiality Threshold will be required at month end. Finally, Item 5 of Form 17–H has been modified to conform to the language of Rule 17h–1T, and the line items in the Form have been revised to reflect the commentators' concerns regarding excessive detail in the disclosure of options positions.

(c) *Financial instruments.* Proposed Rule 17h–1T required broker-dealers to maintain information concerning the activities of a Material Associated Person involving financial instruments with off-balance sheet risk, as that term is used in Statement of Financial Accounting Standards No. 105 ("SFAS 105"). SFAS 105, which applies to all companies preparing financial statements in accordance with GAAP, requires disclosure of information about financial instruments with off-balance sheet risk and financial instruments with concentration of credit risk. Off-balance sheet risk is referred to in SFAS 105 as the risk of accounting loss (defined as the loss that may have to be recognized due to credit and market risk as the result of the obligations from a financial instrument).

Initially, several commentators noted that SFAS 105 requires the disclosure on an annual and not quarterly basis. The firms argued that quarterly reporting under the risk assessment rules would create additional and unneeded cost. The Commission recognizes that certain additional burdens will be created by the imposition of quarterly SFAS 105 disclosure; however, the market for these types of instruments is growing, and much of this activity is being booked outside of the registered broker-dealer. This area may be a source of concern in the future, as complex and risky financial products are developed and become more prevalent in the securities industry. For this reason, the Commission is requiring quarterly reporting of financial instrument data under Rule 17h–2T and Form 17–H.

Additionally, the Commission had made certain revisions to the applicable provisions of the rule and form concerning the disclosure of financial instruments. Generally, these revisions

clarify that the required records and disclosure under the rules would be substantially similar to that required by SFAS 105. Thus, paragraph (a)(1)(vii) of Rule 17h–1T will require broker-dealers to maintain the notional or contractual amounts, and in the case of options, the value of the underlying instruments, of financial instruments as the term is used in SFAS 105. The rules require a separate listing of each instrument where the credit risk with respect to any individual counterparty exceeds the Materiality Threshold at quarter end.[15] As previously proposed, the rules would require the monitoring of large exposures on a daily basis. However, based in part on the recommendation of the SIA, rules have been revised to require tracking at quarter end rather than on a daily basis to reduce unnecessary burdens. The Commission wishes to point out that, because SFAS 105 leaves considerable discretion to a firm in the manner it discloses financial instrument data, Form 17–H contains detailed line item breakdowns of these instruments that will make the information reported to the Commission more meaningful than that would be disclosed under SFAS 105 in a Form 10–K.

(d) *Bridge loans and other extensions of credit.* Paragraph (a)(1)(viii) of Rule 17h–1T will require the aggregate amount at the end of each quarter, and the amount at month end if greater than quarter end, of bridge loans or other similar extensions of credit by each Material Associated Person. In response to the suggestions of the commentators, and as in the case of position reporting, the highest and lowest amounts of bridge loans at any time during the quarter will not be required; similarly, exposures that exceed the Materiality Threshold need only be noted month end. Quarterly disclosure of this information will be required under the provisions of Rule 17h–2T and Form 17–H.

(e) *Commercial paper and other financing information.* Paragraph (a)(1)(ix) of Rule 17h–1T will require broker-dealers to keep the aggregate amount at the end of each quarter, and the amount at month end if greater than quarter end, of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, and the principal installments of long-term or medium-term debt scheduled to mature within one year. The rule has been revised to clarify that this information should be kept for the broker-dealer and each Material Associated Person. Because large broker-dealers rely on the commercial paper market for a significant amount of their daily funding needs, the Commission believes funding data will be critical to the effective implementation of the risk assessment program. As in other areas, the Commission has revised this provision in response to the suggestions of the commentators to require broker-dealers to maintain, and report, the amounts of commercial paper and other financing sources outstanding at the end of each quarter and not the highest and lowest amounts during the quarter as the Commission's proposal would have required.

(f) *Real estate information.* Proposed Rule 17h–1T required broker-dealers to maintain various detailed information concerning the real estate and mortgage loan activities of their Material Associated Persons. The Commission is particularly concerned about the impact mortgage loans and real estate investments made by a Material Associated Person could have on a registered broker-dealer. The Commission is adopting the rules' real estate provisions with a number of changes that respond to the issues raised by the commentators.

Paragraph (a)(1)(x) of Rule 17h–1T will require a breakdown of real estate loans and investments by type of property; geographic distribution; the value of loans that are not current, are in the process of foreclosure, or have been restructured; the allowance for losses on loans and investments; and information concerning risk concentration. The rule specifically excludes information regarding trading positions in whole loans, which, as the commentators pointed out, are usually held for short periods of time. As proposed, Rule 17h–1T would have required the maintenance of information concerning the Material Associated Person's lending and risk management policies and policies for placing loans on a non-accrual status. These requirements have not been adopted into the final rules as the Commission believes this is an area where a burden can be reduced without significant loss to the risk assessment program. The Material Associated Person would only be required to provide the criteria it uses for determining which loans are not current. In this regard, new Item 9 of Form 17–H has been streamlined by eliminating the requirement to produce a narrative analysis reflecting problem loans or investments. Section E of Part II of Form 17–H has similarly been revised by reducing the level of detail in reporting. The Commission believes that these revisions address the concerns of the commentators concerning the burdens of complying with the real estate provisions of the risk assessment rules.

B. *Location of records.* In order to address the commentators' concern with maintaining and storing information about many different enterprises within the holding company, the Commission is adopting a new paragraph in Rule 17h–1T that would permit the required records to be maintained at a Material Associated Person, or at some other records storage facility. Any such location must be in the United States and the records must be kept in an easily accessible place as that term is used in Rule 17a–4. Moreover, in order to operate under this new provision, the broker-dealer must furnish to the Commission an undertaking permitting the examination of the records by the Commission or its designees similar to that currently required by the Commission's broker-dealer recordkeeping rules.

C. *Reporting requirements.* Proposed Rule 17h–2T specified that Form 17–H would be required within 45 days after the end of each fiscal quarter. The rule permitted the filing of the year-end consolidating and consolidated financial statements within 90 days after the end of the fiscal year. Citing personnel and time problems, several broker-dealers, together with the SIA, requested that the filing deadlines be extended by 15 days for both the quarter-end filings and the year-end filings. The Commission regards this concern as valid, and has extended the reporting timeframes set forth in paragraph (a)(1) of Rule 17h–2T to 60 and 105 days respectively.

Rule 17h–2T has also been revised to conform to the various revisions made to rule 17h–1T. For example, paragraph (c)(1) of the rule's special provisions for banks has been refined to specify the particular banking reports that are required to be filed with the Commission. Paragraphs (c)(3) and (d) have been added for Material Associated Persons that are subject to the supervision of the CFTC and foreign regulatory authorities.

IV. Temporary Implementation Schedule

Many of the commentators to the Commission's proposal pointed to the personnel and systems adjustments that would be required to comply with the recordkeeping and reporting requirements set forth in the rules being

[15] SFAS 105 defines "credit risk" as the possibility that a loss may occur from the failure of another party to perform under the terms of the contract.

adopted today. To ease the burdens associated with starting the risk assessment program, the Commission is adopting a temporary implementation schedule to phase-in the rules. During the comment process it was stated that certain of the items called for under the rules (such as the organization chart and risk management policy information) generally already exist. Therefore, it would not be difficult for broker-dealers to supply this information relatively shortly after the rules become effective. The remainder of the financial data will, it was argued, take sometime for the industry to compile.

The Commission believes it is important to commence the information gathering process as soon as possible and therefore the rules will require that broker-dealers maintain the information required by paragraphs (a)(1)(i) (the organization chart), (a)(2)(ii) (risk management policy information) and (a)(1)(iii) (disclosure of litigation) of Rule 17h–1T commencing September 30, 1992. Rules 17h–2T will require broker-dealers to file this limited information with the Commission on or before October 31, 1992. The rules will become fully effective on December 31, 1992.

V. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 630 concerning the final rules. The FRFA notes that the Commission did not receive any comments regarding the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Roger G. Coffin, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC, 20549, (202) 272–7375.

VI. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 17 and 23 thereof, 15 U.S.C. 78q and 78w, the Commission is adding a new 240.17h–1T and 240.17h–2T to title 17 of the Code of Federal Regulations in the manner set forth below.

VII. List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements; Securities.

VIII. Text of the Final Rules

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

Section 240. 17h–1T also issued under 15 U.S.C. 78q.

* * * * *

2. By adding § 240.17h–1T to read as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

(a) Requirement to maintain and preserve information. (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to Section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (c) of this section, shall maintain and preserve the following information:

(i) An organizational chart which includes the broker or dealer and all its associated persons. Included in the organizational chart shall be a designation of which associated persons are Material Associated Persons as that term is used in paragraph (a)(2) of this section;

(ii) Written policies, procedures, or systems concerning the broker or dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets, the structure of debt capital, and sources of alternative funding; and

(C) Trading positions and risks, such as records regarding reporting responsibilities for trading activities, policies relating to restrictions or limitations on trading securities and financial instruments or products, and a description of the types of reviews conducted to monitor existing positions, and limitations or restrictions on trading activities.

(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the broker or dealer that are required to be disclosed by the ultimate holding company under generally accepted accounting principles on a consolidated basis;

(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter end for the broker or dealer and its ultimate holding company;

(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the broker or dealer and its ultimate holding company;

(vi) The amount as of quarter end, and at month end if greater than quarter end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. government or agency securities, that exceeds the Materiality Threshold at any month end;

(vii) The notional or contractual amounts, and in the case of options, the value of the underlying instruments, as of quarter end, of financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk (as those terms are used in Statement of Financial Accounting Standards No. 105) where the Material Associated Person operates a trading book, with a separate entry of each commitment where the credit risk (as that term is used in Statement of Financial Accounting Standards No. 105) with respect to a counterparty exceeds the Materiality Threshold at quarter end;

(viii) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of all bridge loans and those other material unsecured extensions of credit (not including intra-group receivables) with an initial or remaining maturity of less than one year by each Material Associated Person, together with the allowance for losses for such transactions, including a specific description of any extensions of credit to a single borrower exceeding the Materiality Threshold at any month end;

(ix) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of

commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter for the broker or dealer and each Material Associated Person; and

(x) Data relating to real estate activities, including mortgage loans and investments in real estate, but not including trading positions in whole loans, conducted by each Material Associated Person, including:

(A) Real estate loans and investments by type of property, such as construction and development, residential, commercial and industrial or farmland;

(B) The geographic distribution, as of quarter end, by type of loan or investment where the amount exceeds the Materiality Threshold at quarter end;

(C) The aggregate carrying value of loans which each Material Associated Person deems to be not current as to interest or principal, together with the Material Associated Person's criteria for the determination of which loans are not current, or which are in the process of foreclosure or that have been restructured;

(D) The allowance for losses on loans and on investment real estate by type of loan or investment, and the activity in the allowance for losses account; and

(E) Information about risk concentration in the real estate investment and loan portfolio, including information about risk concentration to a single borrower or location of property if the risk concentration exceeds the Materiality Threshold at quarter end.

(2) The determination of whether an associated person of a broker or dealer is a Material Associated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the broker or dealer and the associated person;

(ii) The overall financing requirements of the broker or dealer and the associated person, and the degree, if any, to which the broker or dealer and the associated person are financially dependent on each other;

(iii) The degree, if any, to which the broker or dealer or its customers rely on the associated person for operational support or services in connection with the broker's or dealer's business;

(iv) The level of risk present in the activities of the broker's or dealer's associated persons; and

(v) The extent to which the associated person has the authority or the ability to cause a withdrawal of capital from the broker or dealer.

(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of section 240.17a–4 and shall be kept for a period of not less than three years in an easily accessible place.

(4) For the purposes of this section and section 240.17h–2T, the term "Materiality Threshold" shall mean the greater of:

(i) $100 million; or

(ii) 10 percent of the broker or dealer's tentative net capital based on the most recently filed Form X–17A–5 or 10 percent of the Material Associated Person's tangible net worth, whichever is greater.

(b) Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators. A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by, or the reporting requirements of, a Federal banking agency and the broker or dealer maintains in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956 other than the Form FR 2068; or

(2) If such Material Associated Person is subject to the supervision of an insurance commissioner or other similar official or agency of a state, and the broker or dealer maintains in accordance with the provisions of this section copies of the Annual and Quarterly Statements with Schedules and Exhibits prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners; or

(3) In the event an insurance company is not required to prepare Quarterly Statements on forms prescribed by the National Association of Insurance Commissioners, the broker or dealer must maintain and preserve the records required by paragraph (a) of this section on a quarterly basis; or

(4) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer maintains in accordance with the provisions of this section copies of the reports filed on Forms 1 FR–FCM or 1 FR–IB by such Material Associated Person with the Commodity Futures Trading Commission.

(c) Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority. A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if such broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Persons with a Foreign Financial Regulatory Authority. The broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3–3:

(i) Pursuant to paragraph (k)(1) of § 240.15c3–3; or

(ii) Pursuant to paragraph (k)(2) of § 240.15c3–3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3–1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of section 240.15c3–1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital for the purposes of this paragraph, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the

provisions pursuant to paragraph (d)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with such Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently fixed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to this section concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to § 240.17h-2T.

(e) Location of records. A broker or dealer required to maintain records concerning a Material Associated Person pursuant to this section may maintain those records either at the Material Associated Person or at a records storage facility provided that the records are located within the boundaries of the United States and the records are kept in an easily accessible place, as that term is used in § 240.17a-4. In order to operate pursuant to the provisions of this paragraph, the Material Associated Person or other entity maintaining the records shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the broker or dealer was maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of such records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee true, correct, complete and current hard copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the broker or dealer required to maintain and preserve such records from any of its responsibilities under this section or section 240.17h-2T.

(f) Confidentiality. All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(g) Temporary implementation schedule. Every broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing September 30, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

3. By adding § 240.17h-2T to read as follows:

§ 240.17h-2T Risk assessment reporting requirements for brokers and dealers.

(a) Reporting requirements of risk assessment information required to be maintained by section 240.17h-1T. (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (b) of this section, shall file a Form 17-H within 60 calendar days after the end of each fiscal quarter. The Form 17-H for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year-end financial statements required by section 240.17h-1T may be filed separately within 105 calendar days of the end of the fiscal year.

(2) The reports required to be filed pursuant to paragraph (a)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(3) For the purposes of this section, the term Material Associated Person shall have the meaning used in § 240.17h-1T.

(b) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3-3:

(i) Pursuant to paragraph (k)(1) of § 240.15c3-3; or

(ii) Pursuant to paragraph (k)(2) of § 240.15c3-3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of § 240.15c3-3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3-1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of § 240.15c3-1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital and subordinated debt for the purposes of this section, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (b)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with the Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently filed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to § 240.17h-1T concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to the provisions of this section.

(C) Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators. A broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed on Form FR Y-9C, Form FR Y-6, Form FR Y-7, and Form FR 2068 by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home

Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(2) If the Material Associated Person is subject to the supervision of an insurance commissioner or other similar official agency of a state; and

(i) In the case of a Material Associated Person organized as a public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the filings made by the insurance company pursuant to sections 13 or 15 of the Act and the Investment Company Act of 1940; or

(ii) In the case of Material Associated Person organized as a mutual insurance company or a non-public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the Annual and Quarterly Statements prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners. The Annual Statement furnished to the Commission pursuant to this section shall include: The classification (distribution by state) section from the schedule of real estate; distribution by state, the interest overdue (more than three months), in process of foreclosure, and foreclosed properties transferred to real estate during the year sections from the schedule of mortgages; and the quality and maturity distribution of all bonds at statement values and by major types of issues section from the schedule of bonds and stocks. All other Schedules and Exhibits to such Annual and Quarterly Statements shall be maintained at the broker-dealer pursuant to the provisions of § 240.17h–1T but not furnished to the Commission.

(iii) In the event an insurance company organized as a stock or mutual company is not required to prepare Quarterly Statements, the broker or dealer must file with the Commission a Form 17–H in accordance with the provisions of this section on a quarterly basis.

(3) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by the Material Associated Person with the Commodity Futures Trading Commission on Forms 1 FR–FCM or 1 FR–IB.

(4) No broker or dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Associated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Associated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 24(b) of the Act.

(5) The furnishing of any information or documents by a broker or dealer pursuant to this section shall not constitute an admission for any purpose that a Material Associated Person is otherwise subject to the Act. Any documents or information furnished to the Commission by a broker or dealer pursuant to this rule shall not be deemed to be "filed" for the purposes of the liabilities set forth in section 18 of the Act.

(d) Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority. A broker or dealer shall be deemed to be in compliance with the reporting requirements of this section with respect to a Material Associated Person if such broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The broker or dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(e) Confidentiality. All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(f) Temporary implementation schedule. Every broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 of Form 17–H by October 31, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

5. By adding § 249.328T to read as follows:

§ 249.328T Form 17–H, Risk assessment report for brokers and dealers pursuant to section 17(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by brokers and dealers in reporting information to the Commission concerning certain of their associated persons pursuant to section 17(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78q(h)] and Rules 17h–1T and 17h–2T thereunder [§§ 240.17h–1T and 240.17h–2T of this chapter].

Note: This form will not appear in the Code of Federal Regulations.

Securities and Exchange Commission, Washington, DC 20549

Form 17–H

Risk Assessment Report for Brokers and Dealers

Part I—Risk Assessment Reporting Requirements for Brokers and Dealers

SEC File No. _____
Crd No. _____
Name of Reporting Broker-Dealer _____
Address of Principal Place of Business _____
Firm I.D. No. _____
For Period Beginning (MM/DD/YY) _____
And Ending (MM/DD/YY) _____
Name and Telephone Number of Person To Contact in Regard to This Report _____
Name(s) of Material Associated Persons Contained in This Report: _____
Name of Associated Broker-Dealer(s) Not Filing (If applicable) _____

Attention

Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Intentional misstatements or omissions of facts may also result in civil fines and other sanctions pursuant to Section 20 of the Securities Exchange Act of 1934.

The person signing this report represents hereby that all information contained in this Form is true, correct and complete. It is understood that all information in this Form is considered an integral part of this Form and that the submission of any amendment represents that all unamended information remains true, correct and complete as previously filed.

Pursuant to the Securities Exchange Act of 1934, the undersigned has caused this report to be signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19_____.

_____

(Name of Broker-Dealer)

_____

(Signature and Title of Person Duly Authorized to Submit This Report)

General Instructions

1. This Form consists of two parts. Part I consists of the organizational, policy and legal information required by paragraphs (a)(1)(i) through (iii) of section 240.17h–1T, together with the financial statements required by paragraphs (a)(1)(iv) and (v) of § 240.17h–1T. Part II contains line items for reporting the numerical and other data required by paragraphs (a)(1)(vi) through (x) of § 240.17h–1T

2. Report as of the last day of the fiscal quarter. This Form is to be filed within 60 calendar days of the end of each fiscal quarter by brokers and dealers concerning each Material Associated Person (as defined in Temporary Rules 17h–1T and 17h–2T). The Form for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year end financial statements required by paragraphs (a)(1)(iv) and (v) of § 140.17h–1T may be filed separately within 105 calendar days of the end of the fiscal year.

3. In the event a broker or dealer is associated with one or more other registered brokers or dealers, each broker or dealer is required to file a separate Form 17–H. The Commission may exempt from the filing requirements all brokers or dealers associated with a broker or dealer that has been designated a "Reporting Broker or Dealer." The term "Reporting Broker or Dealer" shall have the meaning set forth in Rules 17h–1T and 17h–2T. A broker or dealer seeking designation as a Reporting Broker or Dealer must apply to the Commission for an exemption pursuant to Rule 17h–2T. Pending such designation, each broker or dealer associated with the broker or dealer requesting such designation as a Reporting Broker or Dealer is required to file a separate Form 17–H.

4. The information requested in Part II of this Form shall be completed separately for each Material Associated Person, even if the financial data contained in the broker or dealer's Form X–17A–5 contains information concerning a Material Associated Person. The broker-dealer should not include information concerning its activities in the information required by Part II of this Form if such information is filed with the Commission as part of the broker-dealer's Form X–17A–5 or Form G–405.

Item 1.—Organizational Chart Reflecting the Associated Persons and the Broker-Dealer

1. Provide a copy of the organizational chart maintained by the broker or dealer pursuant to paragraph (a)(1)(i) of § 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed by the broker or dealer and in the year end filing. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 2.—Risk Management and Other Policies

1. Provide copies of the financing, capital adequacy, and risk management and other policies, procedures or systems maintained by the broker-dealer pursuant to paragraph (a)(1)(ii) of section 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed by the broker or dealer. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 3.—Legal Proceedings

1. Provide the description of any material pending legal or arbitration proceedings maintained by the broker or dealer pursuant to paragraph (a)(1)(iii) of § 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed with the Commission. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 4.—Financial Statements

1. Provide the information required to be maintained by the broker or dealer pursuant to paragraphs (a)(1)(iv) and (a)(1)(v) of § 240.17h–1T. The financial statements may be presented on an unaudited basis. The statement of cash flows and the notes to financial statements may be omitted for the consolidating financial statements. Entities using accounting principles other than U.S. GAAP should indicate in a note the accounting principles used.

2. The consolidating financial statements must be presented on a subsidiary basis and shall indicate which subsidiaries are Material Associated Persons.

Part II—General Instructions for Part II of This Form

1. Provide the following information for each Material Associated Person as of the end of the quarter. Indicate the name of each Material Associated Person in a separate column. In the event a separate listing of a position, financial instrument or otherwise is required pursuant to any of the provisions of § 240.17h–1T the broker or dealer should indicate as such in the appropriate section of this Part II. Indicate a separate listing for long and short positions.

I. Aggregate Securities and Commodities Positions Indicate long and short positions separately)

1. U.S. Treasury securities
2. U.S. Government agency
3. Securities issued by states and political subdivisions in the U.S..
4. Foreign securities:
   (a) Debt securities
   (b) Equity securities
5. Banker's acceptance
6. Certificates of deposit
7. Commercial paper
8. Corporate obligations
9. Stocks and warrants (other than arbitrage positions).
10. Arbitrage:
    (a) Index arbitrage and program trading.
    (b) Risk arbitrage
    (c) Other arbitrage
11. Options:
    (a) Market value of put options:
        (i) Listed
        (ii) Unlisted
    (b) Market value of call options:
        (i) Listed
        (ii) Unlisted
12. Spot commodities
13. Investments with no ready market:
    (a) Equity
    (b) Debt
    (c) Other (include limited partnership interests).
14. Other securities of commodities
15. Summary of delta or similar analysis (if available).

II. Financial Instruments With Off-Balance Sheet Risk and With Concentration of Credit Risk (Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument. In the event a separate listing of a position or instrument is required pursuant to the provisions of section 17h-1T separately state such position separately.

A. Securities
1. When-issued securities:
   (a) Gross commitments to purchase.
   (b) Gross commitments to sell
2. Written stock option contracts:
   (a) Market value, and the value of the underlying securities, of call contracts:
       (i) Listed
       (ii) Unlisted
   (b) Market value, and the value of the underlying securities, of put contracts:
       (i) Listed
       (ii) Unlisted

(c) Market value, and the value of the underlying securities, of naked call contracts:
(i) Listed.....
(ii) Unlisted.....
(d) Market value, and the value of the underlying securities, of naked put contracts:
(i) Listed.....
(ii) Unlisted.....
3. Futures:
(a) U.S. Treasury and mortgage-backed securities futures.
(b) Other futures (specify).....
4. Forwards:
(a) U.S. Treasury and mortgage-backed securities.
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
(b) Other forwards (specify).....
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

B. Interest Rate Swaps
1. U.S. dollar denominated swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
2. Cross currency swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

C. Foreign exchange
1. Swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:
(a) Future .....
(b) Forwards.....
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
3. Contractual value together with value of the underlying instruments of naked written option contracts.

D. All other swap agreements (specify type)
1. Total notional or contractual amount.
2. Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
3. Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

E. Commodities
1. Futures.....
2. Forwards.....
(a) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(b) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)
(a) Market value, and the value of the underlying securities, of call contracts:
(i) Listed.....
(ii) Unlisted.....
(b) Market value, and the value of the underlying securities, of put contracts:
(i) Listed.....
(ii) Unlisted.....
(c) Market value, and the value of the underlying securities, of naked call contracts:
(i) Listed.....
(ii) Unlisted.....
(d) Market value, and the value of the underlying securities, of naked put contracts:
(i) Listed.....
(ii) Unlisted.....

F. Loan commitments
1. Total amount .....
2. Unused portion.....

G. Total standby, commercial and similar letters of credit or guarantees.

H. Assets sold with recourse .....

I. Other off-balance sheet items (specify).

J. Summary of delta or similar analysis (if available).

K. Provide a separate listing, by amount, of significant concentrations of credit risk as defined in Statement of Financial Accounting Standards 105.

III. Bridge Loans and Other Extensions of Credit
1. Bridge loans .....
2. Other material credit extensions (specify).
3. Allowance for losses for credit extensions.

IV. Funding Sources
1. Short-term borrowings:
(a) Commercial paper .....
(b) Bank loans-secured .....
(c) Bank loans-unsecured.....
(d) Other.....
(e) Total.....
2. Long and medium-term debt.. .....
3. Committed lines of credit .....
4. Amounts borrowed under credit lines.
5. Credit ratings for commercial paper
(a) Standard & Poor's Corporation.
(b) Moody's Investor Service .....
(c) Other Nationally Recognized Statistical Rating Organization.

V. Real Estate
1. Real estate loans:
(a) Construction and land development.
(b) Secured by farmland.....
(c) Secured by residential properties.
(d) Commercial and industrial.....
(e) Other.....
2. Real estate investments:
(a) Construction and land development.
(b) Farmland.....
(c) Residential properties.....
(d) Commercial and industrial.....
(e) Other.....
3. Provide a separate listing of the above information by geographic region where the amount exceeds the Materiality Threshold.
4. Provide information about risk concentration to a single borrower, location or property in the investment or loan portfolio where the amount exceeds the Materiality Threshold

Dated: July 16, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-17151 Filed 7-20-92; 12:01 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C-0506]

Listing of Color Additives Exempt From Certification; Diluents for Color Additive Mixtures: Calcium Disodium EDTA (Calcium Disodium Ethylenediaminetetraacetate) and Disodium EDTA (Disodiumethylenediaminetetraacetate)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs. This action is in response to a petition filed by Warner-Jenkinson Co.

DATES: Effective August 21, 1992, except as to any provisions that may be stayed by the filing of proper objections; written objections by August 20, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 10, 1990 (55 FR 908), FDA announced that a color additive petition (CAP 9C0218) had been filed by Warner-Jenkinson Co., P.O. Box 14538, St. Louis, MO 63178–4538, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs. This amendment will provide for the use of these diluents in color additive mixtures for ingested drug use by the cross-reference already given in 21 CFR 73.1001(a)(1). The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

II. Conclusion

Based on data contained in the petition and other relevant information, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of calcium disodium EDTA and disodium EDTA as diluents in color additive mixtures for use in food and ingested drugs. The agency also concludes on the basis of those data and existing regulations for uses of calcium disodium EDTA (21 CFR 172.120) and disodium EDTA (21 CFR 172.135), that the diluents will perform their intended effects as preservatives and sequestrants, and thus, are suitable for these uses. The agency, therefore, is amending the color additive regulations in 21 CFR 73.1(a)(3) to provide for use of the diluents disodium EDTA and calcium disodium EDTA.

FDA further concludes that color additive mixtures containing calcium disodium EDTA and disodium EDTA are exempted from batch certification subject to the condition that each straight color in the mixture has been exempted from batch certification or, if not so exempted, is from a batch that has previously been certified and that has not changed in composition since certification. Mixtures of certifiable color additives are further subject to the restrictions of 21 CFR 80.35(b), wherein the certified batch of straight color is simply mixed with the approved diluent(s) and the label of such color additive mixtures shall not bear the lot number assigned by FDA to the certified straight color components, but shall bear the manufacturer's control number through which the history of the straight color can be determined.

III. Inspection of Documents

In accordance with 21 CFR 71.15, the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 20, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. Section 73.1 is amended in the table in paragraph (a)(3) by alphabetically

adding two new entries under the headings "Substances", "Definitions and specifications", and "Restrictions" to read as follows:

§ 73.1 Diluents in color additive mixtures for food use exempt from certification.

* * * * *

(a) * * *

(3) * * *

Substances	Definitions and specifications	Restrictions
Calcium disodium EDTA (calcium disodium ethyl-enediamine-tetraacetate).	Contains calcium disodium ethyl-enediamine-tetraacetate dihydrate (CAS Reg. No. 6766-87-6) as set forth in the Food Chemicals Codex, 3d ed., p. 50, 1981.	May be used in aqueous solutions and aqueous dispersions as a preservative and sequestrant in color additive mixtures intended only for ingested use; the color additive mixture (solution or dispersion) may contain not more than 1 percent by weight of the diluent (calculated as anhydrous calcium disodium ethyl-enediamine-tetraacetate).
*	*	*
Disodium EDTA (disodium ethyl-enediamine-tetraacetate).	Contains disodium ethyl-enediamine-tetraacetate dihydrate (CAS Reg. No. 6381-92-6) as set forth in the Food Chemicals Codex, 3d ed., p. 104, 1981.	May be used in aqueous solutions and aqueous dispersions as a preservative and sequestrant in color additive mixtures intended only for ingested use; the color additive mixture (solution or dispersion) may contain not more than 1 percent by weight of the diluent (calculated as anhydrous disodium ethyl-enediamine-tetraacetate).

* * * * *

Dated July 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-17143 Filed 7-20-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

[Docket No. 92N-0271]

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for the use of a generic sulfadimethoxine soluble powder as an antibacterial in drinking water for broiler and replacement chickens and meat-producing turkeys, and in drinking water and as a drench for dairy calves, dairy heifers, and beef cattle.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8648.

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, is the sponsor of ANADA 200-031 which provides for the use of a generic sulfadimethoxine soluble powder as an antibacterial in drinking water for the treatment of broiler and replacement chickens for coccidiosis, fowl cholera, and infectious coryza; meat-producing turkeys for coccidiosis and fowl cholera; and in drinking water and as a drench for the treatment of dairy calves, dairy heifers, and beef cattle for shipping fever complex, bacterial pneumonia, calf diphtheria, and foot rot.

Approval of ANADA 200-031 for Agri Laboratories, Ltd.'s, Sulfadimethoxine Antibacterial Soluble Powder is as a generic copy of Hoffmann-LaRoche's NADA 046-285 for Albon® Soluble Powder (sulfadimethoxine). The ANADA is approved as of June 17, 1992, and the regulations are amended in 21 CFR 520.2220a to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In addition, Agri Laboratories, Ltd., has not previously been listed in 21 CFR 510.600(c) as a sponsor of an approved application. That section is amended to add new entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Agri Laboratories, Ltd.," and in the table in paragraph (c)(2) by numerically adding a new entry for "057561" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503	057561
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
057561	Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2220a [Amended]

4. Section 520.2220a. Sulfadimethoxine drinking water and drench is amended in paragraph (b) by removing "(1)" after the word "follows:" and by adding the phrase "and 057561" after the number "000004".

Dated: July 9, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-17059 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. L. Laboratories, Inc. The NADA provides for the use of two separately approved Type A medicated articles, one containing narasin and the other containing bacitracin methylene disalicylate, to make combination Type C medicated feeds for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8602.

SUPPLEMENTARY INFORMATION: A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has filed NADA 140-853 which provides for the combination of separately approved narasin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds containing 54 to 72 grams (g) of narasin per ton and 10 to 50 g of bacitracin methylene disalicylate per ton. The feed is used in broiler chickens for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati, E. necatrix,* and *E. tenella,* for increased rate of weight gain, and for improved feed efficiency.

The NADA is approved as of May 22, 1992, and the regulations are amended in 21 CFR 558.76(d)(3) and 558.363(c)(1) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years exclusivity beginning May 22, 1992, because it contains reports of new clinical or field investigations essential to the approval of the application.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), room 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended by revising paragraph (d)(3)(xiii) to read as follows:

§ 558.76 Bacitracin, methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xiii) Narasin alone or in combination with roxarsone as in § 558.363.

3. Section 558.363 is amended by adding paragraph (c)(1)(vi) to read as follows:

§ 558.363 Narasin.

* * * * *

(c) * * *

(1) * * *

(vi) *Amount per ton.* Narasin 54 to 72 grams, and bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati, E. necatrix,* and *E. tenella,* for increased rate of weight gain, and for improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Narasin as provided by 000986, bacitracin methylene disalicylate by 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: June 22, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-17508 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-M#

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF-327]

Distilled Spirits for Fuel Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is amending the regulations in 27 CFR part 19 regarding the submission of operational reports by large and medium size alcohol fuel plants (AFP). Under current regulations, large alcohol fuel plants are required to submit quarterly reports of operations (ATF Form 5110.75) to the Bureau, medium size plants are required to submit these reports on a semiannual basis, and small alcohol fuel plants are required to submit these reports annually. This Treasury decision eliminates the requirement to submit quarterly and semiannual reports. Alcohol fuel plants will only be required to submit a single, annual report of operations.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. No. 96–223, 94 Stat. 229) amended the Internal Revenue Code of 1954 by adding a new section 5181, Distilled Spirits for Fuel Use. 26 U.S.C. 5181 provides for the establishment of distilled spirits plants solely for the purpose of producing, processing, storing, and using or distributing, distilled spirits to be used exclusively for fuel use.

Regulations implementing this section of law are incorporated into 27 CFR part 19, subpart Y—Distilled Spirits for Fuel Use. These regulations allow for the establishment of a new type of distilled spirits plant, exclusively for the production, processing and storing, and use or distribution of alcohol for fuel purposes, Alcohol Fuel Plants (AFP). The regulations also waive many of the normal requirements for qualification and operation of this new type of distilled spirits plant.

27 CFR 19.907 defines three types of alcohol fuel producers. They are:

(a) *Small plant.* An AFP which produces (including receipts) not more than 10,000 proof gallons of spirits per calendar year.

(b) *Medium plant.* An AFP which produces (including receipts) more than 10,000 and not more than 500,000 proof gallons of spirits per calendar year.

(c) *Large plant.* An AFP which produces (including receipts) more than 500,000 proof gallons of spirits per calendar year.

27 CFR 19.988 requires that alcohol fuel plants periodically file reports of their operations depending on the type of plant, as follows:

Small plant—Annually (December 31)
Medium plant—Semiannually (June 30 and December 31)
Large plant—Quarterly (Close of each calendar quarter)

These reports are submitted on ATF Form 5110.75 and contain information regarding the quantities of spirits which are produced, received, and used in the production of alcohol fuel, and the quantities and disposition of the alcohol fuel produced by each AFP. The Bureau of Alcohol, Tobacco and Firearms (ATF) has required the submission of these reports of operations by AFP's so as to monitor industry operations for compliance with law and regulations, and to analyze trends in the industry.

Regulatory Initiative

On January 28, 1992, President Bush announced a regulatory initiative. This initiative included a 90-day moratorium on issuance of proposed or final rules, with some limited exceptions. The President also called for a review of all existing regulations and programs to identify any which impose substantial costs on the economy. The regulations governing alcohol fuel plants were reviewed under this program.

Review of AFP Report Requirements

After reviewing the report requirements governing alcohol fuel plants, ATF believes that it can sufficiently monitor industry operations through submission of a single, annual report from all three types of alcohol fuel plants. Accordingly, ATF is amending 27 CFR 19.988 to require an annual report in lieu of quarterly and semiannual reports of operations by large AFP's and medium AFP's respectively.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Executive Order 12291

It has been determined that this final rule is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Administrative Procedure Act

Because this Treasury decision merely reduces the reporting requirements for medium and large alcohol fuel proprietors from semiannual and quarterly, respectively, to annually, it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because it does not impose any new reporting requirements. This final rule eliminates some of the reporting requirements applicable to large and medium size alcohol fuel producers.

Drafting Information

The principal author of this document is Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Accordingly, under the authority of 26 U.S.C. 5181, and 26 U.S.C. 7805, 27 CFR part 19 is amended as follows:

PART 19–DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6808, 7011, 7510, 7805; 31 U.S.C 9301, 9303, 9304, 9306.

Par. 2. Section 19.988 is revised to read as follows:

§ 19.988 Reports.

Each proprietor shall submit an annual report of their operations, Form 5110.75, for the calendar year ending December 31. The proprietor shall submit this report to the regional director (compliance) by January 30 following the end of the calendar year.

(Sec. 807, Pub. L. No. 96–39, 93 Stat. 284 [26 U.S.C. 5207])

Signed:

Daniel R. Black,

Director.

Approved: June 19, 1992.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 92–17123 Filed 7–20–92; 12:01 pm]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 385

[DoD Directive 5111.1]

Under Secretary of Defense for Policy (USD(P))

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships and authorities of the USD(P). Significant revisions include the following: Deletes USD(P) responsibility for the counterintelligence and security countermeasures functions, which the Secretary of Defense recently transferred to the ASD(C3I) and Deletes USD(P) oversight responsibility for the following organizations, which the Secretary of Defense recently placed under the authority, direction, and control of the ASD(C3I): the Defense Investigative Service, the Defense Polygraph Institute, the DoD Security Institute, and the Defense Personnel Security Research and Education Center.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone 703–697–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 385

Organization and functions (Government agencies).

Accordingly, 32 CFR part 385 is revised to read as follows:

PART 385—UNDER SECRETARY OF DEFENSE FOR POLICY

Sec.

Authority: 10 U.S.C. 134.

§ 385.1 Purpose.

Under title 10 of the United States Code this part updates the responsibilities, functions, relationships, and authorities of the USD(P) as prescribed herein, and supersedes DoD Directive 2030.1 [1].

§ 385.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 835.3 Responsibilities and functions.

The Under Secretary of Defense for Policy is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters concerning the integration of DoD plans and policies with overall national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council (NSC), Department of State, and other Departments, Agencies, and interagency groups with responsibilities in the national security area.

(b) Develop policy and coordinate implementation of arms control negotiations, including DoD positions on arms reductions and other defense-related international negotiations.

(c) Develop policy and oversee their implementation on international security countermeasures activities of the Department of Defense; and carry out the responsibilities of the Secretary for the administration of National Disclosure Policy, the Security Policy Automation Network (SPAN), including the Foreign Disclosure and Technical Information System (FORDTIS), the Foreign Visits System (FVS), and future systems available through the SPAN. As the U.S. Security Authority for the North Atlantic Treaty Organization (NATO), serve as the primary focal point for staff coordination on these matters within the Department of Defense, with other Government departments and agencies, and with foreign governments and international organizations, and provide DoD representation to foreign governments and intergovernmental and international organizations dealing with these matters.

(d) Develop policies and coordinate implementation of DoD political-military affairs, including: nuclear weapons policy and strategy; theater nuclear matters; special operations; low-intensity conflict; law of the sea; foreign military rights; strategic offensive and defensive forces; general purpose forces; special operations forces; and the relationship between strategic and theater force planning, programs, and budgets.

(e) Review evaluations and develop recommendations to the Secretary of Defense on plans and requirements for, and capabilities of, existing or proposed U.S. or foreign forces and their deployment, with particular attention to performance of missions which are or may be critical in the consideration of U.S. national security policy.

(f) Assist the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces (including Special Operations Forces), and in reviewing such plans.

(g) Provide oversight of all DoD activities related to technology transfer; develop, coordinate, and provide policy direction and overall management for the DoD Technology Security Program and policy relating to international technology transfer, to include export controls, dual-use and munitions licensing, arms cooperation programs, and support for enforcement and intelligence agencies.

(h) Develop policy, plans, procedures, and exercise OSD management oversight for the discharge of DoD functions for the following: Emergency

[1] Canceled document. Copies may be obtained from Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

planning and preparedness; crisis management; defense mobilization and expansion in emergency situations; military support to civil authorities; civil defense; and continuity of operations and, as assigned by the Secretary of Defense, continuity of government. Lead and coordinate DoD Component activities to provide support, as required, to other U.S. Government departments and agencies, and the State governments on the planning and exercising of national security emergency preparedness matters.

(i) Develop policy, coordinate DoD participation, exercise OSD management oversight, and provide appropriate OSD approval processes for DoD involvement in national security special activities, special access programs, sensitive support to non-DoD agencies, and other uniquely sensitive national security programs. Provide special support to the Secretary of Defense in connection with his participation in related NSC activities.

(j) Plan and conduct net assessments for the Secretary of Defense.

(k) Negotiate and monitor agreements with foreign governments and defense alliances to which the United States is a party. Develop DoD policy and coordinate plans and programs undertaken in cooperation with foreign governments and military establishments, and represent the Department of Defense, as directed, in the conduct of alliances and defense relationships.

(l) Provide policy direction for defense security assistance matters; monitor Security Assistance Offices and other missions on security assistance; and negotiate and monitor foreign military sales and other security assistance agreements with foreign governments.

(m) Develop DoD policy and coordinate actions relating to humanitarian assistance support.

(n) Develop DoD space policy and review and evaluate programs, plans, and systems requirements relating to the use of outer space, including participation in outer space activities of the NSC and other interagency fora, consistent with DoD Directive 3500.1.[2]

(o) Serve as the Secretary's and Deputy Secretary's principal advisor for the planning phase of the DoD Planning, Programming, and Budgeting System, to include the lead role in developing overall policy, defense strategy, and force and resource planning; and serve as a key participant in programming and budgeting decisions as well. Coordinate the development and approval of the Defense Planning Guidance.

(n) Develop DoD policy and programs on psychological operations.

(p) Develop DoD policy guidance for DoD participation in international activities supporting U.S. information programs.

(q) Develop DoD policy, coordinate policy implementation, and provide oversight for DoD support for international counternarcotics effort.

(r) Develop policy, plans, and procedures and provide oversight of all DoD activities related to international economic policy, including international trade and international energy/strategic materials security policy. Provide for DoD representation on interagency committees dealing with international economic policy, including the Trade Policy Committee and its subordinate groups, and relevant committees established by the Economic Policy Council (and successors to these committees and groups).

(s) Conduct policy planning for U.S. national security policy and strategies.

(t) Develop policy, review requirements, coordinate, make recommendations, as appropriate, and exercise policy oversight for the programs for execution of the joint worldwide reconnaissance schedule and other sensitive related activities.

(u) Develop, coordinate, and implement policy on all matters relating to prisoners of war and missing in action.

(v) Perform such other functions as the Secretary of Defense may prescribe.

§ 385.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Exercise authority, direction, and control over:

(i) The Deputy Under Secretary of Defense for Policy.

(ii) The Assistant Secretary of Defense (International Security Affairs).

(iii) The Assistant Secretary of Defense (International Security Policy).

(iv) The Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict).

(v) The Director, Defense Security Assistance Agency.

(vi) The Director, Defense Technology Security Administration.

(vii) Such Deputy Under Secretaries and Directors as may be established.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal organizations having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the USD(P) on all matters related to the responsibilities and functions cited in section 385.3.

§ 385.5 Authorities.

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, Dod publications, and one-time directive-type memoranda, consistent with DoD 5025.1M [3], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [4], in carrying out assigned functions, as necessary.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government Agencies, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

(e) Perform the statutory functions of making findings, determinations, certifications, and waivers under Public Law No. 87–195 (1961) and Public Law 90–629 (1968), and arms export-related provisions of authorization and appropriation acts which grant powers vested directly in the Secretary of Defense or delegated to him by Executive order. The USD(P) may redelegate these authorities, currently contained in enclosures (1) and (2) of DoD Directive 5105.38 [5], in whole or in part, as appropriate, and in writing, to civilian Presidential appointee in the Department of Defense or the Director of the Defense Security Assistance Agency, who may not redelegate them.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to § 385.3(n).

[4] See footnote 2 to § 385.3(n).

[5] See footnote 2 to § 385.3(n).

Dated: July 16, 1992.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 92-17109 Filed 7-20-92; 12:01 pm]
BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6936

[AK-932-4214-10; AA-3104]

Revocation of Bureau Order Dated May 9, 1955, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety, the Bureau Order dated May 9, 1955, as it affects 181.30 acres of public lands withdrawn and reserved near Gustavus, Alaska, for use by the Civil Aeronautics Administration (now the Federal Aviation Administration), for the maintenance of air navigation facilities. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the lands for selection by the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. The Bureau Order dated May 9, 1955, which withdrew public lands for air navigation facilities near Gustavus, Alaska, is hereby revoked as it affects the following described lands:

Copper River Meridian

T.40 S., R. 59 E.,
Sec. 9, lot 1 and N½SE¼;
Sec. 16, lot 2 and NW¼NW¼.
The areas described aggregate 181.30 acres.

2. Subject to valid existing rights, the lands described above are hereby opened for selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the Federal Register, if such land is otherwise available. Lands not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: July 8, 1992.
Frank A. Bracken,
Deputy Secretary of the Interior.
[FR Doc. 92-17072 Filed 7-20-92; 12:01 pm]
BILLING CODE 4310-JA-M

43 CFR Public Land Order 6937

[AK-932-4214-10; F-14223]

Public Land Order No. 6932, Correction; Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects an error in the land description in Public Land Order No. 6932.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 6932, 57 FR 24985-24986, June 12, 1992, is hereby corrected as follows:

On page 24985, third column, under the heading Parcel 1, line 19, which reads "feet to corner No. 9; Thence, S.4 36°21' W.," is hereby corrected to read "feet to corner No. 9; Thence, S. 36°21' W.,".

Dated: July 8, 1992.
Frank A. Bracken,
Deputy Secretary of the Interior.
[FR Doc. 92-17073 Filed 7-20-92; 12:01 pm]
BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket 91-119; FCC 92-316]

Use of Alternative Dispute Resolution Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a final rule which clarifies the types of proceedings to which the provisions of the Administrative Dispute Resolution Act (ADRA), particularly the confidentiality protections, should apply. The intended effect of this rule is to resolve the uncertainty surrounding this technical issue concerning the scope of the ADRA before the June 30, 1992 commencement of our ADR pilot project in the formal common carrier complaint area. Therefore, we are bifurcating this proceeding and dealing with the rulemaking on an expedited basis. Those comments relating to the issues raised in the Second Notice of Inquiry concerning an FCC roster of neutrals will be addressed in a separate Commission Order.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon Kelley, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

1. On September 26, 1991, the Commission adopted an Initial Policy Statement and Order, 56 FR 51178 (October 10, 1991), 6 FCC Rcd 5669 (1991), encouraging the use of alternative dispute resolution (ADR) procedures in its administrative proceedings, as authorized under the Administrative Dispute Resolution Act (ADRA), and Negotiated Rulemaking Act (NRA) and adopted a provision in part 1 of the Commission's rules recognizing this policy. At that same time, we announced the initiation of an ADR pilot project to test the effectiveness of ADR procedures in the resolution of formal complaints brought pursuant to section 208 of the Communications Act, 47 CFR 208.

2. The ADRA provides that an agency may use ADR to resolve an "issue in

controversy" which it defines as an issue "with which there is disagreement between the agency and persons who would be substantially affected by the decision." The ADRA could thus be read as inapplicable to those proceedings before the Commission in which the Commission is the deciding body but is not itself a party. Congress has not yet enacted a corrective amendment, see Administrative Procedure Technical Amendments Act, H.R. 2549, 102d Cong. 1st Sess. (1991). The Interstate Commerce Commission dealt with this uncertainty by proposing to amend its rules to clarify the types of proceedings on which ADRA procedures will apply. They concluded that the ADRA does not in any way limit an agency's power to use ADR techniques in matters not expressly governed by the ADRA. We proposed to adopt a similar rule.

II. Discussion

3. The comments submitted in response to the NPRM/SNOI unanimously support amending the Commission's rules pursuant to our own independent authority, to clarify that the ADRA applies to those proceedings before the Commission in which the Commission is the deciding body but not itself a party. The commenters agree that the ADRA provisions, particularly the confidentiality protections, are "essential to the effective functioning of alternative dispute resolution methods," and would encourage the use of ADR procedures in proceedings before the Commission. U.S. West reasoned that it also makes good sense to amend section 1.18 of the Commission's rules to clarify that ADRA procedures apply "whether or not the Commission is involved in the actual ADR process, "[t]o engage parties to be forthcoming and candid, without fear that frank statements and interexchanges may later be used against them * * *"

4. We agree with these comments that § 1.18(b) should be adopted as proposed. We also wish to make clear that, under this new rule, ADRA provisions apply even in situations where the FCC may not be aware that parties have hired a private neutral. At the same time, it is important to reemphasize that, even if ADRA procedures apply, there may be cases where the Commission is not able to accept the parties' settlement agreement.

III. Conclusion

5. After considering the record developed herein, the Commission is amending § 1.18 of the Commission's rules.

6. Accordingly, *It Is Ordered*, that § 1.18 of the Commission's rules *Is Amended*, as set forth below, to be effective upon publication in the **Federal Register**.

7. We find good cause to dispense with the effective date provisions of the Administrative Procedure Act to ensure that parties who take part in the Commission's ADR pilot project will be entitled to the procedural protections of the ADRA, particularly its confidentiality provisions. 5 U.S.C. 553(d)(3).

8. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 4 U.S.C. 154(i), 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of title 47 of the CFR is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.18 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1.18 Administrative Dispute Resolution.

* * * * *

(b) In accordance with the Commission's policy to encourage the fullest possible use of alternative dispute resolution procedures in its administrative proceedings, procedures contained in the Administrative Dispute Resolution Act, including the provisions dealing with confidentiality, shall also be applied in Commission alternative dispute resolution proceedings in which the Commission itself is not a party to the dispute.

[FR Doc. 92-16929 Filed 7-20-92; 12:01 pm]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920400-2100]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule is in effect through July 16, 1992, which allocates Pacific whiting (whiting) between vessels that deliver to shoreside and to at-sea processors. The emergency rule is intended to preserve harvesting opportunities for operators of catcher vessels that do not process, by preventing preemption of shoreside processing operations by at-sea processors, and by promoting the development of shoreside processing opportunities in coastal communities while continuing to allow participation by the at-sea processing fleet. Because conditions warranting the emergency still exist, the Secretary of Commerce (Secretary) extends the emergency interim rule.

DATES: Effective from 0001 hours July 17, 1992, through October 19, 1992. Comments are invited until August 5, 1992. On the basis of comments received, NMFS may rescind, modify, or revoke this action.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, Washington 98115-0070; or Charles E. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 310-980-4040.

SUPPLEMENTARY INFORMATION: Under Section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), an emergency rule was implemented on April 15, 1992 (57 FR 13661), effective through July 16, 1992, to allocate whiting between shorebased and at-sea processors. The emergency rule apportioned the 208,800-metric ton (mt) harvest guideline of Pacific whiting (whiting): 98,800 mt for processing at sea, 80,000 mt for shoreside processing, and the remaining 30,000 mt reserved for later release to either sector, giving priority to shoreside processing needs. Two provisions were made to assure full utilization of the harvest guideline: (1) If 60 percent (48,000 mt) of the shoreside allocation is not processed by September 1, the 30,000-mt reserve will be made available for processing at sea; and (2) the needs of shoreside processors will be reassessed and any amount of the remaining harvest guideline that is not needed by them for

the remainder of 1992 may be released for processing at sea on October 1, or soon thereafter. This emergency rule was implemented to preserve harvesting opportunities for operators of catcher vessels that do not process, to prevent preemption of shoreside processing operations by at-sea processors, and to promote the development of shoreside processing opportunities in coastal communities while continuing to allow participation by the at-sea processing fleet. This emergency rule was recommend by the Pacific Fishery Management Council (Council) at its March, 1992, meeting, and was intended to be extended for a second 90-day period in order to encompass the time period of the majority of the 1992 Pacific whiting fishery.

At-sea processors took their initial allocation in only 3 weeks, processing over 38,000 mt the last week. Shoreside processors have processed a record 14,000 mt to date and are continuing to process whiting at the highest rates on record. If this emergency rule had not been implemented, the at-sea processing fleet would have taken almost all of the harvest guideline within 6 weeks, preempting the majority of shoreside operations.

The emergency rule must be extended for an additional 90 days to continue providing harvesting and processing opportunities for all sectors of the whiting fishery for the remainder of the whiting season. Otherwise, at-sea processors would be able to take the entire remaining whiting harvest guideline so quickly that the shoreside processors would not be able to compete with them.

Comments. NMFS has received several comments from at-sea processing representatives asking that the release of the reserve to at-sea processing, if any, be delayed from September to October, and occur in conjunction with the reapportionment of any surplus allocation not needed by shoreside processors. They indicated that if the 30,000-mt reserve were released for at-sea processing in September, it could be taken in less than a week, and at-sea processing vessels would be idled until the second reassessment is completed in October. They considered this potential to be costly to the at-sea processing fleet. They argued that a single reapportionment would provide for an uninterrupted fishery in October rather than two shorter openings, one in September and the other in October.

Response to Comments. Although NMFS believes the comments have merit, other representatives from at-sea processing companies have indicated that they have made annual fishing plans based on the two releases authorized by the emergency rule as written, and that subsequent changes to the rule would be disruptive to their planned activities. Due to a lack of consensus within the at-sea processing industry favoring a change to the rule, NMFS has decided to extend the rule without any changes.

The emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following procedures of that order is not possible.

The Council voted to extend the emergency at its meeting on July 8, 1992. Because the emergency still exists, the Secretary extends the effectiveness of the emergency rule for an additional 90 days, through October 14, 1992.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–17113 Filed 7–16–92; 3:26 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AF02

Cost-of-Living Allowance and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to include the Commonwealth of the Northern Mariana Islands in the Territory of Guam nonforeign cost-of-living allowance (COLA) area. This change will entitle certain Federal white-collar employees in the Commonwealth of the Northern Mariana Islands to a COLA and will reduce the post differential currently payable in that area. OPM also proposes to amend appendices A and B to subpart B of part 591, title 5, Code of Federal Regulations, to incorporate the above changes, remove obsolete material, and include current COLA rates and post differentials. Except for the changes described in the "Supplementary Information" below, OPM is proposing no changes in the amounts of COLA's or post differentials at this time.

DATES: Comments must be received on or before August 20, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley (202) 606-3710 or (FTS) 266-3710.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10,000, OPM has the authority to establish COLA's in nonforeign overseas areas and in Alaska if living costs are substantially higher than those in Washington, DC. In addition, OPM is authorized to establish post differentials as a recruitment incentive based on conditions of environment that differ substantially from conditions in the continental United States. For nearly 17 years, OPM has authorized both a COLA and a post differential for the Territory of Guam allowance area. The current COLA rate is 12.5 percent, and the current post differential is 20 percent.

In response to requests for the U.S. Department of Agriculture and the Department of Health and Human Services, OPM proposes to expand the Guam allowance area to include the Commonwealth of the Northern Mariana Islands. Though smaller in industry and population than Guam, the Commonwealth of the Northern Mariana Islands is similar in terms of its economic base and activity. Furthermore, many Federal employees in the Northern Mariana Islands have close working relationships with Federal employees in Guam. The expansion of the allowance area will improve pay equity among Federal employees in these areas.

This change will result in the payment of both a COLA and a post differential in the Northern Mariana Islands. Although the Guam post differential is lower than the current Northern Mariana Islands post differential (25 percent), no employee's pay will be affected. Post differentials are payable to nonlocal hires to the extent that both COLA and post differentials combined do not exceed the statutory maximum, which is 25 percent. Because the current COLA in Guam is 12.5 percent, the combination of COLA and post differential payable will be 25 percent until such time as either the COLA or post differential is adjusted.

OPM proposes to amend appendices A and B to 5 CFR part 591, subpart B. These amendments are necessary to incorporate the above changes, remove obsolete material, and include the current nonforeign area COLA rates as published in Federal Personnel Manual Letter 591-51, dated March 2, 1990. One change in appendix B deletes Canton Island as a place at which differentials are paid because Canton Island is no longer a nonforeign area. As a foreign area, any allowances or differentials payable in that area are prescribed by State Department regulations.

Except for the changes affecting the Commonwealth of the Northern Mariana Islands, OPM proposes no changes in the amounts of COLA's or post differentials at this time. Any future changes in allowance rates will be published as separate notices of proposed and final rules in the Federal Register.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) or E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

1. The authority citation for part 591 continues to read as set forth below:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.204, paragraph (b)(5) is revised to read as follows:

§ 591.204 Establishment of allowance areas.

* * * * *

(b) * * *

(5) Territory of Guam and Commonwealth of the Northern Mariana Islands. (i) The Territory of Guam.

(ii) The Commonwealth of the Northern Mariana Islands.

* * * * *

3. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate

to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic Coverage/Allowances Category	Percent[1]
State of Alaska	
City of Anchorage and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	17.5
City of Fairbanks and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	20.0
City of Juneau and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	25.0
Rest of the State: All Employees	25.0
State of Hawaii	
City and County of Honolulu:	
Local Retail	22.5
Commissary/Exchange	12.5
County of Hawaii: All Employees	15.0
County of Kauai:	
Local Retail	17.5
Commissary/Exchange	17.5
County of Maui and County of Kalawao: All Employees	20.0
Territory of Guam and Commonwealth of the Northern Mariana Islands	
All Locations:	
Local Retail	12.5
Commissary/Exchange	0
Commonwealth of Puerto Rico	
All Locations:	
Local Retail	10.0
Commissary/Exchange	0
The Virgin Islands	
St. Croix: All Employees	12.5
St. Thomas and St. John: All Employees	12.5

[1] Authorized allowance rate (percent).

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance Category and Definition

Local Retail—This category includes those employees who purchase goods and services from private retail establishments

Commissary/Exchange—This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

Subpart B, Appendix B, [Amended]

4. In appendix B of subpart B, the listing for Canton Island is removed and the listing for the Commonwealth of the Northern Mariana Islands is revised to read as follows:

Geographic coverage	Percentage differential rate	Effective date
Commonwealth of the Northern Mariana Islands.	20.0	Aug. 20, 1992.

[FR Doc. 92-17032 Filed 7-20-92; 12:01 pm]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59 and 70

[Docket PY-92-002]

RIN 0581-AA72

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Sevice, USDA.

ACTION: Notice of correction to proposed rule.

SUMMARY: This document contains a correction in the supplementary information published with proposed regulations on Monday, July 6, 1992 (57 FR 29661). The supplementary information misstated the approximate date that increased fees would be effective.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202-720-3271.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of overtime, holiday, and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. Accordingly, the proposed rule, as published, contains proposed regulatory amendments which would increase the fees for these services.

Included in the Supplementary Information under the heading "Timing of Any Fee Increase" was an approximate date of June 1, 1992, for implementation of the fee increases. This error, while obviously misstated, may prove to be misleading to the industries using the voluntary grading and inspection services.

Correction of Publication

Accordingly, the publication on July 6, 1992, of the proposed rule on increase in fees and charges (Doc. No. PY-92-002) is corrected as follows:

Supplementary Information, page 29661, Column 1, Paragraph 1, Timing of Any Fee Increase. In the last sentence, the approximate effective date of June 1, 1992, is corrected to read "September 1, 1992."

Done at Washington, DC, on: July 15, 1992.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 92-17119 Filed 7-20-92; 12:01 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1703

RIN 0572-AA60

Deferments of REA Loan Payments for Rural Development Projects

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Rural Electrification Administration (REA) published a proposed rule entitled Deferments of REA Loan Payments for Rural Development Projects in the **Federal Register** on June 16, 1992, (57 FR 26782). The proposed rule provided an opportunity for interested parties to send comments to REA until July 16, 1992. REA is reopening the comment period.

DATES: Written comments must be received by REA or carry a postmark or equivalent no later than August 5, 1992.

ADDRESSES: Submit an original and three copies of written comments to Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural

Electrification Administration, room 4025, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments may be inspected at room 2238 of the South Building between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION: REA has determined that it would be beneficial to reopen the comment period for another 15 days to allow an opportunity for additional comments from interested parties.

Authority: 7 U.S.C. 901 *et seq.*

Dated: July 15, 1992.

James B. Huff, Sr.,

Administrator.

[FR Doc 92–17116 Filed 7–20–92; 12:01 pm]

BILLING CODE 3410–15–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 92N–0251]

Electronic Identification/Signatures; Electronic Records; Request For Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is considering whether the agency should propose regulations that would, under certain circumstances, accept electronic identification or electronic signatures in place of handwritten signatures where signatures are called for in Title 21 of the Code of Federal Regulations (CFR), and where the electronic form of the signature bearing record is allowable by the regulations. The decision on whether to propose such regulations will be based on information and comments submitted in response to this advance notice of proposed rulemaking, the recommendations and findings of the agency's Task Force on Electronic Identification/Signatures, and the agency's experience with alternatives to conventional handwritten signatures.

DATES: Written information and comments by October 19, 1992.

ADDRESSES: Submit written information and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

This document, together with the February 24, 1992, report of the agency's Electronic Identification/Signature Working Group, discussed elsewhere in this notice, is available (without references) via Internet and Bitnet by sending an electronic mail message to DOC00001@FDACD.BITNET. The sole purpose of this address is to automatically distribute the notice and report, by return electronic mail. Therefore, no other correspondence should be sent to the address, and there is no need to include text in the body or subject of the request message.

The full report (in hard copy) may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92–183193 and include payment of $50.00 (for paper copy; order number PB 92–183193 (A19)) or $19.00 (for microfiche; order number PB 92–183193 (A04)) for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. The report is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–295–8089. Electronic mail address via MCI® Telecommunications Corp. (MCI®) Mail: Name: Paul J. Motise, EMS: FDA, MBX: MOTISE, MBX: A1, MBX: FDACD. (For help in addressing format contact the MCI® mail customer support line (1–800–444–6245)).

SUPPLEMENTARY INFORMATION: The agency is aware that automated systems are being used more extensively in the various industries it regulates. Use of such systems is also expanding within the agency itself. An emerging objective of the use of automation is the implementation of paperless electronic records. Signatures are a key aspect of many records and the transition from paper records containing traditional handwritten signatures to paperless electronic records raises a set of issues relating to FDA acceptance of alternatives to handwritten signatures. Electronic records can contain human endorsements using various technologies. An alternative to the handwritten signature in such electronic records is termed an electronic identification/signature, for purposes of this document.

The agency has met with members of the pharmaceutical industry who sought advice on how they could implement paperless records systems within regulations for 21 CFR Part 210—Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; General and 21 CFR Part 211—Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals, i.e., CGMP's. Upon examining how the agency might accommodate such records and attendant endorsements by electronic identification/signature, FDA found the issues to be complex, affecting regulations beyond the CGMP area. For example, a review of Title 21 of the CFR found references to signatures in 132 different sections; a listing of these sections is contained in the report identified below. These regulations typically address signatures in manufacturing production records, clinical investigation records, and formal submissions to the agency. Absent, however, is a codified definition of signature itself. The same preliminary examination took note of the agency's own paperless electronic records which may contain electronic identifications/signatures.

To identify the issues and develop preliminary approaches on how FDA might accept signature alternatives in an agency-wide manner, the agency formed an FDA Task Force on Electronic Identification/Signatures. The task force created a subgroup, the Electronic Identification/Signature Working Group to address the issues in greater detail. A copy of the group's initial report dated February 24, 1992, has been placed on file and is on display at the Dockets Management Branch (address above), for public examination; copies may be obtained from NTIS (address above). The report recommended publication of an advance notice of proposed rulemaking to obtain wide public comment on the issues to determine whether the agency should promulgate regulations that would, under certain circumstances, accept electronic identification signatures in place of handwritten signatures where signatures

are required by various FDA regulations.

The agency is considering the use of electronic identification/signatures within the general context of three categories of current and future paperless (electronic) records: (1) Records maintained by industry which are subject to FDA inspection (e.g., batch production records for drug products, low acid canned foods, or infant formulas); (2) records submitted to FDA for review and approval, usually as part of research or marketing applications (e.g., new drug applications and food additive petitions); and (3) FDA's own records (e.g., sample collection reports) and notifications to industry (e.g., electronic mail). The agency requests that comments address the issues within these three categories of records, and how these records may or may not lend themselves to the use of electronic identification signatures. The agency wishes to clarify, however, that at this time it does not seek to mandate the conversion of paper records to electronic form.

Although this notice pertains to records which are currently allowed by the regulations to be in electronic form, the issues related to electronic identification/signatures are germane to electronic records, in general. Therefore, the agency welcomes comments that identify any record now required by FDA that may be amenable to being in electronic form.

The agency is aware of a variety of signature alternative technologies and will consider their acceptance according to their performance characteristics and the level of security they provide. The level of performance and security would be commensurate with the regulatory significance of the electronic record. The agency is seeking comments on how this stratified acceptance might be accomplished. For example, FDA might establish definitions which incorporate technological and security distinctions for the terms signature, signatures recorded electronically, electronic signature, and electronic identification. In the agency's experience, a signature is generally the name of an individual, handwritten in script by that individual; the act of signing usually involves use of a writing or marking instrument and provides a unique and secure link to the individual. Where such a signature is captured on electronic media instead of on paper, the result might be termed "signatures recorded electronically."

The agency is aware of various technologies that dispense with the act of signing, but still apparently furnish an intrinsic biometric or behavioral link to an individual such that someone else cannot make use of that person's signature alternative (e.g., retinal scan systems, voice prints, hand prints). The agency is considering the term "electronic signatures" for such systems.

Another type of signature alternative appears to lack intrinsic biometric or behavioral links to the person being identified, but instead relies upon administrative controls to maintain the uniqueness and security of the identification method. Examples of such signature alternatives are systems which use (individually, or in combination) bar codes, passwords/identification codes, and personal identification devices (badges/cards). The agency is considering the term "electronic identification" for such systems.

The agency requests comments on how the above, or other classes of signature alternatives would fulfill three general purposes of the traditional handwritten signature: (1) To identify the actor and show his/her authority to act; (2) to document the action in a way that is legally binding and cannot be altered or repudiated; and (3) to create a record that would be admissible evidence in court.

To be acceptable to the agency, electronic identification signatures need to be as legally acceptable as conventional, handwritten signatures. The agency would have to conform to any acceptance criteria established by the courts. FDA expects electronic identification/signatures to carry the same commitment, legal weight, and significance as conventional handwritten signatures. Falsification of signature alternatives must be considered fraudulent to the same extent as is falsification of handwritten signatures.

The agency is seeking specific comments on each of the following issues which are addressed in greater detail in the above-referenced working group report:

1. *Regulatory Acceptance.* Various FDA regulations are worded in ways that do not accept signature alternatives. For example, the CGMP regulations for human and veterinary drugs do not anticipate or allow electronic identification/signature substitutes for handwritten signatures; 21 CFR 211.186 explicitly requires full handwritten signatures. Various submissions to the agency regarding medical devices must contain signatures; 21 CFR 1005.25 requires signatures to be written "in ink." On the other hand, the agency has accepted encoded computerized endorsements where the low acid canned food regulations call for identification of individuals who perform certain actions. The agency believes it would be beneficial to take a uniform approach to accepting signature alternatives and is seeking comments on how such an approach may be codified and how various records required by the regulations might lend themselves to the use of electronic identification/signatures.

2. *Enforcement Integrity.* Acceptance of signature alternatives must not hamper the agency's enforcement efforts. For example, FDA investigators must be able to obtain copies of electronic records which would be admissible evidence in regulatory actions to demonstrate individual responsibility. The agency conducted a review of relevant statutes and cases and found no court cases which clearly recognize the validity of signature alternatives. At the same time, no cases were found that would impede acceptance of signature alternatives. FDA's examination also disclosed several sections of Title 18 of the United States Code that FDA could use to pursue cases of electronic records falsification. (Details of the review are contained in the working group report.) The agency is particularly interested in comments on this aspect of adopting electronic identification/signatures.

3. *Security.* The agency is concerned that electronic identification/signatures be secure from abuse and falsification. Although FDA recognizes that virtually any system can be corrupted and defeated by individuals who are intent on falsification, substitutes for handwritten signatures should nonetheless be at least as secure as conventional handwritten signatures. The agency requests comments on how electronic identification/signatures can be secured. This issue is critical because of the ease with which some electronic identification methods can be falsified without leaving an audit trail. The agency seeks comments on whether some types of signature alternatives may be too insecure to accept at all, and if the agency should establish a stratified system whereby the regulatory significance of a given record would determine the level of security that would be necessary for a signature alternative.

4. *Validation.* The agency recognizes the importance of validation as a means of attaining confidence in the reliability of signature alternative technologies. Based upon the agency's inspectional findings of inadequacies regarding computer systems validation in general, FDA is concerned that new technologies may be adopted before they are

adequately validated. Therefore, the agency requests comments on key elements of validation of electronic identification/signature systems and on what type of guidance FDA should develop in this area.

5. *Standards.* The agency's acceptance of signature alternatives would be facilitated if FDA could apply appropriate signature standards developed by other organizations. The agency is aware that a Digital Signature Standard has been proposed by the National Institute of Standards and Technologies (NIST). A copy of the proposed NIST standard is included as an attachment to the working group report, on file at the Dockets Management Branch (address above). The agency seeks comments on the application of the proposed NIST standard to FDA matters, as well as comments on any other relevant standards.

6. *Freedom of Information.* The agency has very limited experience in handling freedom of information (FOI) requests that: (1) Are submitted in electronic form, (2) request that paper documents be supplied in electronic form, and (3) request that electronic documents be furnished in electronic form. However, FDA anticipates receiving such requests in the future as paperless systems are adopted. Comments are requested on the need to establish modified fees and procedures.

The agency also welcomes comments on any related issues. In addition, the agency would like to hear from developers of electronic identification/signature systems. Presentations before the task force are welcome and may be arranged through the contact person listed above. However, this request is for information only and does not undertake any commitment to purchase any system. In the event that any future acquisition results from this activity, such acquisitions will be conducted in accordance with the requirements for competition as set forth in the Federal Acquisition Regulation (Title 48 of the CFR). The agency emphasizes that the purpose of such presentations is for FDA to obtain information on emerging technologies and not to endorse or disapprove particular systems.

Interested persons may, on or before October 19, 1992, submit to the Dockets Management Branch (address above) written information and comments regarding this advance notice of proposed rulemaking. Two copies of the information and comments should be submitted, except that individuals may submit one copy. The information and comments are to be identified with the docket number found in brackets in the heading of this document. The information and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-17144 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

PANAMA CANAL COMMISSION

35 CFR Part 133

RIN 3207-AA32

Tolls for Use of Canal

AGENCY: Panama Canal Commission.

ACTION: Proposed rule; recommendation to the President.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.9% in the rates of tolls to become effective October 1, 1992. The basis for the toll increase is that the Commission anticipates that in fiscal years 1992 and 1993, it will experience, in the aggregate, a significant deficit created by a trend of nominal traffic and revenue growth inadequate to absorb cost increases due to inflation. The proposed increase is necessary to comply with the statutory requirement that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements, and working capital.

DATES: Proposed effective date: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, DC 20036-4996, (Telephone: (202) 634-6441).

SUPPLEMENTARY INFORMATION: Section 1602 (b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, as well as to provide capital for plant replacement, expansion and improvements, and working capital.

The rates of tolls for use of the Panama Canal were last increased on October 1, 1989 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1991, but the Commission anticipates significant deficits, in the aggregate, during the next two fiscal years.

These deficits are the result of the continuing trend of traffic growth revenues inadequate to absorb cost increases due to inflation. Commission projections indicate that total operating expenses in fiscal year 1992 will exceed revenues by $4.2 million. In fiscal year 1993, at present toll rates, a cumulative deficiency of $37.6 million is projected. This growing imbalance between inflation and traffic growth underlies the clear need for implementing a toll rate increase of 9.9%. The new rates will replace existing rates on October 1, 1992.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls.

Pursuant to the statute and regulations, on April 15, 1992, an advance notice of proposed rulemaking was published in the **Federal Register** (57 FR 13067) recommending a 9.9% increase in the rates of Canal tolls, to become effective on October 1, 1992. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on June 4, 1992. The views presented by the interested parties, as well as other relevant information, were considered by the Board of Directors of the Commission at its quarterly meeting of July 1992. On July 16, 1992, the Board voted to recommend to the President that the proposed 9.9% increase be implemented on October 1, 1992. A complete record of the proceedings since the initiation of the proposal, including the data, views and arguments submitted by the interested parties will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President may approve, disapprove or modify the recommendation of the Commission. The final rule, approved and published by the President, will be effective no earlier than thirty days from the date of publication in the **Federal Register.**

This proposed rulemaking does not constitute a "major rule" as defined in

section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls concludes that the proposal is not a major federal action which will have a significant effect on the quality of the environment of a foreign nation; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required.

The Assistant to the Chairman and Secretary of the Panama Canal Commission has certified to the Office of Management and Budget that these proposed changes in regulations meet the applicable standards provided in sections 2(a) and (b)(2) of Executive Order No. 12778.

Finally, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Part 133

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR part 133 be amended as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.23 per ton of displacement.

Dated: July 16, 1992.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 92-17087 Filed 7-20-92; 8:45 am]

BILLING CODE 3640-04-M

POSTAL SERVICE

39 CFR Part 111

Vendor Presort Software Validation Program

AGENCY: Postal Service.

ACTION: Notification of public meeting.

SUMMARY: The U.S. Postal Service (USPS) is holding a public meeting to give interested parties an additional opportunity to present their views on the proposed rule on the Vendor Presort Software Validation Program.

DATES: 8 a.m., August 5, 1992.

ADDRESSES: The meeting will take place at the National Address Information Center, 6060 Primacy Parkway, Memphis, TN.

FOR FURTHER INFORMATION CONTACT: Charles G. Delaney at (202) 1268–5321 or George T. Hurst at (202) 268–5232.

SUPPLEMENTARY INFORMATION: After receiving written comments in response to a **Federal Register**, notice of proposed rulemaking (57 FR 12893–12901), the Postal Service has decided to provide an additional opportunity for comment. To facilitate the receipt of comments, a public meeting will be held on August 5, 1992, at 8 a.m. at the National Address Information Center, 6060 Primacy Parkway, Memphis, TN. At that time the public will have an opportunity to provide oral and written comments concerning the proposed rule. Any one interested in attending should contact either Charles G. Delaney or George T. Hurst.

After considering all comments received in response to the original **Federal Register** notice, and comments received at this meeting, the Postal Service will publish a notice regarding the final adoption of this rule.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-17077 Filed 7-20-92; 12:01 pm]

BILLING CODE 7710-12-M

39 CFR Part 111

Coding Accuracy Support System (CASS) Certification of Address Matching Software for Automation-Based Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal will amend *Domestic Mail Manual* (DMM) subchapter 530 to change the requirements for Coding Accuracy Support System (CASS) certification of address matching software.

DATE: Comments on this proposed rule must be received on or before August 17, 1992.

ADDRESS: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, SW, room 8430, Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 A.M. and 4 P.M., Monday through Friday, in room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: George T. Hurst (202) 268–5232.

SUPPLEMENTARY INFORMATION:

The CASS Certification Process

This proposed rule would change the requirements for Coding Accuracy Support System (CASS) certification to ensure that the necessary software is in place for mailers to make a smooth transition from ZIP+4 barcoding to delivery point barcoding. As noted in DMM Issue 42, March 15, 1992, the Postal Service plans, subject to future regulatory action, to require a delivery point barcode (DPBC) on all letter-size mail claimed at a barcoded rate, effective March 21, 1993.

The Postal Service Coding Accuracy Support System (CASS) certification process is a testing procedure that provides a common platform to measure the quality of address matching software and provide useful diagnostics to correct software deficiencies. CASS currently tests the ability of address matching software to accurately match address records to the Postal Service ZIP+4 data base and assign correct 5-digit, ZIP+4, delivery point, and carrier route codes, depending on the level of certification desired. (Currently, 5-digit, ZIP+4, delivery point, and carrier route certification are all available.)

The CASS certification procedure is available free of charge to all vendors and users of address matching software. However, the Postal Service incurs ever

increasing costs to support the wide variety of CASS testing processes. To contain these costs, the Postal Service proposes to eliminate the certification of address matching software products that perform only verification and or assignment of ZIP+4 code information. The Postal Service would continue to support the certification of delivery point code address matching software products that provide and/or correct ZIP+4 code information. This would allow the Postal Service to maintain as few individual software testing procedures as practicable in support of the mailing industry's need for address matching products to qualify address information for automation-based postage rates (ZIP+4 and ZIP+4 barcoded rates).

Address matching software capable of providing only ZIP+4 information will decrease in importance with the planned March 21, 1993 implementation of the delivery point barcoding requirement. At that time, the Postal Service plans to require mailers wishing to obtain a barcoding discount for letter-size mail to have processed their addresses through software that is CASS certified for its ability to generate delivery point information. Since the DPBC is formed simply by adding two additional digits from the existing address to the ZIP+4 code, list owners or processors wishing to obtain only ZIP+4 code information will be able to do so through the use of delivery point code address matching software. In addition, CASS certified ZIP+4 code information will continue to be available through vendors licensed by the Postal Service to provide National Change of Address service or Delivery Sequence File service, as well as through the purchase of the Computerized Delivery Sequence (CDS) product.

Consistent with recent changes in the CASS cycle (providing for two semi-annual cycles of 7-months duration overlapping by 30 days, effective November 1, 1992) and to allow additional time to convert to DPBC, the Postal Service has extended the current grace period on processing of address lists using CASS certified software to November 30, 1992.

Creating a CASS Certification Procedure for 2-Digit Utilities

Appending delivery point code (DPC) information to existing address lists or files may require more computer storage capacity than is readily or cost effectively available to some list owners, processors, or mailers. For those mailers who choose to append the DPC information to the individual address records at the time addresses are printed for mailing rather than permanently store this additional data with each record, the Postal Service plans to offer a new CASS testing procedure to evaluate and certify the accuracy of "2-digit DPC Utilities" that may be used to derive the last 2 digits of the DPBC from a standardized address format.

Although it is strongly recommended, mailers are not required to use the standardized address elements output by a CASS certified address matching process on a mailpiece to qualify for automation-based postage rates (ZIP+4 or ZIP+4 Barcoded rates). However, the accuracy of a 2-digit DPC utility will depend upon the accuracy of the primary house or building number of a given address. If this primary house or building number has not been previously verified for accuracy, the 2-digit DPC utility may append incorrect delivery point information. Therefore, the Postal Service proposes to require 2-digit DPC utility software be used only with standardized addresses to ensure the accuracy of the information the software must identify to develop a correct DPC. Mailers who choose not to store the DPC information with the address record in their files must obtain and use standardized address information when processing with 2-digit DPC utilities.

The CASS evaluation, scoring, and certification of 2-digit DPC utilities will be similar to the current certification process for delivery point coding software. The USPS would provide a test deck comprising sample addresses from across the country with missing or incorrect 2-digit DPC information which the software vendor or user would process and return for evaluation. To be CASS certified, a 2-digit DPC utility would have to accurately append the correct 2-digit DPC information with 100% accuracy to the standardized ZIP+4 coded addresses on the test deck. Retesting and certification will occur on the same cycle as all other CASS certifications. The CASS certification process for 2-digit DPC utilities will be available with the fall, 1992 CASS certification cycle.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rule making, 5 U.S.C. 553(b), (c), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406 3621, 5001.

2. Chapter 5 of the Domestic Mail Manual is amended as follows:

CHAPTER 5—AUTOMATION-COMPATIBLE MAIL

* * * * *

530 Address and ZIP+4 Code Accuracy

531 CODING ACCURACY SUPPORT SYSTEM (CASS) CERTIFICATION

* * * * *

531.111 *Definition.* [Change the first sentence as follows:] "The Coding Accuracy Support System (CASS) is a process designed in cooperation with the mailing industry to improve the accuracy of delivery codes, ZIP+4 codes, 5-digit ZIP Codes, and carrier route codes appearing on mailpieces."

* * * * *

531.112 *Requirement.* [Change the last sentence as follows:] "Mailers using multiline optical character readers (MLOCRs) to place delivery point or ZIP+4 barcodes on mailpieces must also obtain CASS certification for the address matching software used on their MLOCR equipment."

531.113 *Delivery Point Barcoding Option.* [Replace the first 4 sentences with the following:] "The use of a delivery point barcode instead of a ZIP+4 barcode on mailpieces to obtain barcoded rates is optional."

531.12 Methods To Obtain ZIP+4 Coding

* * * * *

b. CASS certified DPC address matching software

* * * * *

e. CASS certified ZIP+4 address matching software.

Note: CASS certification of ZIP+4 address matching software is no longer provided effective September 1, 1992. ZIP+4 codes may be obtained from CASS certified DPC address matching software. In addition, address lists coded with ZIP+4 address matching software CASS certified before September 1, 1992 may continue to be used in accordance with 531.15.

* * * * *

531.114 *Use of Current Information.* [Change the first sentence as follows:] "When used for ZIP+4 coding or ZIP+4 barcoding, the address matching software and methods described in 531.11 through 531.13 must have a valid CASS certification and must use the current Postal Service ZIP+4 file that

has been updated to include all applicable change transaction files."

* * * * *

[Eliminate current 531.15, and renumber 531.16, 531.161, and 531.162 as 531.15, 531.151, and 531.152 respectively. In 531.152 change the first sentence as follows:] "To allow for the planned transition to delivery point coding requirements (see 531.112), a one-time grace period is provided for those mailers whose normal 12-month address processing anniversary falls from March 1 through November 30, 1992." [Change the date in the next sentence and the last sentence to:] "November 30, 1992."

* * * * *

531.2 Address Lists

[After 531.22 add the following:] "Note: CASS certification of ZIP+4 address matching software is no longer provided effective September 1, 1992. ZIP+4 codes may be obtained from CASS certified DPC address matching software. In addition, address lists coded with ZIP+4 code address matching software CASS certified before September 1, 1992 may continue to be used in accordance with 531.15.

* * * * *

532 REQUIRED DOCUMENTATION

* * * * *

532.22 Summary Output Information

* * * * *

[Eliminate 532.222 and renumber 532.223 and 532.224 as 532.222 and 532.223. In what becomes 532.222 eliminate *b*(7) and *c*. In what becomes 532.223 change *a*. and *b*. as follows:]

a. The number of addresses successfully coded with correct 5-digit ZIP Codes.

b. The number of addresses successfully coded with correct carrier route codes.

* * * * *

532.32 Mailings Produced From a Single Address List

* * * * *

[Eliminate 532.322 and renumber 532.323 and 532.324 accordingly.]

* * * * *

532.33 Mailing Produced From Multiple Address Lists

* * * * *

[Eliminate 532.332 and renumber 532.333 and 532.334 accordingly.]

* * * * *

533 HOW TO OBTAIN CASS CERTIFICATION

533.1 General. [Text of existing 533].

533.2 CASS Stage I. The CASS certification process is a two stage procedure. Stage I is a test file with answers which is supplied upon request to customers wishing to certify an address matching software product. The Stage I file contains fabricated sample addresses from address ranges across the country with missing or incorrect address element information. The correct answers supplied on this Stage I test file provide a means for self-assessment of address matching software accuracy so that software vendors or users can pre-determine their product's readiness for the actual test.

533.3 CASS Stage II. The Stage II file is the actual test without answers and is used as the measurement device for certification of the accuracy of address matching software. Similar to the Stage I file, the Stage II file contains fabricated sample addresses from address ranges across the country with missing or incorrect address element information that the address matching software must correct. Software vendors or users processes the Stage II file against its address matching products, appending the correct or missing information being tested for in each address record. Upon completion, the Stage II file is then returned to the Postal Service for analysis, scoring, and, if qualified, certification. For multiline optical character readers (MLOCRs) and encoding stations, CASS certification is obtained by barcoding sample mailpieces in a test deck. Upon completion, the test deck is returned to the Postal Service for analysis, scoring and, if qualified, certification.

533.4 Certification Requirements. To be CASS certified, delivery point code address matching software must first correctly ZIP+4 code the addresses contained in the Stage II file or test deck with 96% accuracy. Once this 9-digit code has been determined, delivery point code address matching software must correctly append the additional 2-digits of the delivery point code to the Stage II file or test deck with 100% accuracy.

A 2-digit utility (separate or "stand alone" address matching software that appends only the correct 2-digit DPC information) must use the standardized address information returned by DPC address matching software when determining the correct delivery point code. A 2-digit utility must assign the 2-digit delivery point code to the addresses contained in the Stage II file with 100% accuracy.

To be CASS certified, address matching software used to assign 5-digit ZIP Codes and carrier route codes must assign the appropriate codes to the Stage II file with 98% accuracy.

533.5 Customer Notifications. The Postal Service sends written notice to the customer requesting the CASS test, informing the customer of the results of analysis and the product certification status. The USPS publishes a list of certified software vendors and users biannually, identifying those products that, based upon Postal Service evaluation, have performed to the established accuracy standards. Follow-up notification is mailed to alert previously certified address matching software vendors and users of the next certification cycle.

* * * * *

534 ACCURATE ADDRESSING

* * * * *

534.4 Format of Numeric Equivalent of the Delivery Point Barcode. A numeric equivalent to the delivery point barcode must consist of five numbers, a hyphen, and seven numbers as required by 515.3 and must only be printed on a mailpiece within a barcoded rate mailing.

* * * * *

550 Requirements for Barcoded Pieces

551 ZIP+4 Barcode Requirements

* * * * *

551.12 Delivery Point Barcode Format

551.121 Unique 5-Digit ZIP Code. [Change the end of the first sentence as follows:] ". . . returned by the CASS certified DPC address matching process."

* * * * *

551.122 Firm ZIP+4 Code. [Change the end of the first sentence as follows:] ". . . returned by the CASS certified DPC address matching process."

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 92-17068 Filed 7-20-92, 12:01 pm]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO9-1-5335; FRL-4156-9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Missouri State Implementation Plan (SIP) which would replace outdated incinerator regulations with comprehensive statewide incinerator regulations which are based on the current technical data. These revisions should effectively reduce air emissions from incinerators through the requirement of emission limits and good operating practices.

EFFECTIVE DATE: All comments should be submitted to EPA at the address shown and must be received on or before August 20, 1992.

ADDRESSES: Comments may be mailed to Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public inspection at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551-7020.

SUPPLEMENTARY INFORMATION: On July 1, 1991, Missouri submitted new regulations 10 CSR 10-6.160 entitled "Medical Waste and Solid Waste Incinerators," and 10 CSR 10-6.190 entitled "Sewage Sludge and Industrial Waste Incinerators." Both rules were published in the Missouri Code of State Regulations on May 31, 1991, and became effective June 10, 1991. These regulations contain requirements for incinerator operation, emissions limits, performance testing, operator training, and reporting and recordkeeping.

The new Missouri incinerator rules are more stringent than existing Missouri incinerator rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and 10 CSR 10-5.080 for the following reasons: (1) The new rules have emission limits for particulate matter which are more stringent than the existing rules; (2) Contrary to the old incinerator rules, the new rules limit carbon monoxide emissions either through a combustion efficiency requirement or through an emission limit set at the time of the performance test; (3) The new rules have miscellaneous requirements for incinerator operation, operator training, and reporting and recordkeeping which are not addressed in the existing incinerator rules.

On February 18, 1991, the rescissions of Missouri's area-specific incinerator rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and CSR 10-5.080 were submitted to EPA. On October 15, 1991, the rescissions of all five rules were published in the Missouri Code of State Regulations. The rescissions became effective October 25, 1991. These rules had limited operating parameter requirements and only one emission limit, which was for particulate matter.

The EPA is proposing to approve the rescission of existing rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and 10 CSR 10-5.080, and the EPA is proposing to approve the new, more stringent requirements of incinerator rules 10 CSR 10-6.160 and 10 CSR 10-6.190. However, the Clean Air Act does not provide the authority for EPA to approve the following sections of the Missouri incinerator rules as a SIP revision:

(1) The emission limit and corresponding sampling method listed in regulation 10 CSR 10-6.190 for hydrogen chloride (subsections 4(F) and 5(D)) will not be approved as a part of this SIP revision.

(2) The emission limits and corresponding sampling methods listed in regulation 10 CSR 10-6.160 for hydrogen chloride (subsections (4)(L) and 6(G)); dioxins and furans (subsections (4)(M) and 6(H); and mercury (subsection (4)(N) and (6)(I)) will not be approved as a part of this SIP revision.

Certain categories of sources which emit such noncriteria pollutants are regulated under section 111 of the Clean Air Act, and the regulation of the aforementioned pollutants is consistent with the intent of the Clean Air Act—specificially including section 111 New Source Performance Standard for Municipal Waste Combustors located in 40 CFR part 60, subpart Ea, subsections 60.54(d), 60.53(a), and 60.52(a).

On March 19, 1992, amendments to rule 10 CSR 10-6.030 were submitted to EPA. On September 20, 1991, these amendments were published in the Missouri Code of State Regulations and they became effective September 30, 1991. These amendments establish new sampling methods for particulate emissions (subsection (5)(C) and subsection (5)(D)), hydrogen chloride emissions (section (15)), dioxin and furan emissions (section (16)), and mercury emissions (section (17)).

In addition, on September 20, 1991, Missouri submitted administrative amendments to rule 10 CSR 10-6.030. The substantive provisions of this rule have been approved by EPA in previous **Federal Register** notices. The administrative changes consist of the renumbering of various sections of the rule. The following amendments were submitted:

Section (14) (Lead Sampling Methods) will become section (12); section (12) (Fluoride Sampling Methods) will become section (13); section (13) (Volatile Organic Compound Sampling Methods) will become section (14); section (20) (General Reference Methods) will become section (18); and section (21) (Alternative Sampling Methods) will become section (19). These administrative changes represent significant changes in the rule organization but not the rule content.

The EPA is proposing to approve the additional sampling methods and the administrative reorganization of regulation 10 CSR 10-6.030.

State rules with citations referring to the renumbered sampling methods in rule CSR 10-6.030 were administratively amended and included in the submission. The renumbering of 10 CSR 10-6.030 section (13) (VOC sampling methods) to 10 CSR 10-6.030 section (14) affects the following rules which site VOC sampling methods: 10 CSR 10-2.210, 10 CSR 10-2.230, 10 CSR 10-2.260, 10 CSR 10-2.290, 10 CSR 10-2.300, 10 CSR 10-2.310, 10 CSR 10-2.320, 10 CSR 10-5.220, 10 CSR 10-5.300, 10 CSR 10-5.320, 10 CSR 10-5.330, 10 CSR 10-5.360, 10 CSR 10-5.370, 10 CSR 10-5.390, 10 CSR 10-5.410, and 10 CSR 10-5.430. These rules have been submitted with the appropriate amended citations. Only the amended citations will be approved as a SIP revision since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

The renumbering of 10 CSR 10-6.030 section (12) (Fluoride emissions sampling methods) to 10 CSR 10-6.030 section (13) affects the following rules which cite fluoride sampling methods: 10 CSR 10-3.160 and 10 CSR 10-6.090. Only the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

The renumbering of 10 CSR 10-6.030 section (14) (Lead emissions sampling methods) to 10 CSR 10-6.030 section (12) affects rule 10 CSR 10-6.120 which cites lead emission sampling methods. Only

the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

For the following rules, citations to 10 CSR 10–6.030 section (20) have been replaced by a citation to a specific sampling method in 10 CSR 10–6.030 section (14): 10 CSR 10–2.280 and 10 CSR 10–5.350. Only the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

All rule actions listed in this notice were submitted in compliance with section 172(b)(2) and section 110 of the Clean Air Act.

EPA Action

The EPA is proposing to approve rule revisions to the Missouri SIP which would effectively reduce air emissions from incinerators through the requirement of emission limits and good operating practices.

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Nothing in this action should be construed as permitting of llowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

With regard to the renumbering of rule 10 CSR 10–6.030 and the rules with citations to those renumbered sections, EPA has not reviewed the substance of these regulations at this time. These rules were approved into the state implementation plan in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the state. The EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive requirements of the rules.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPAs request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: July 6, 1992.

Morris Ray,

Regional Administrator.

[FR Doc. 92–17140 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 81

RIN 3067–AB87

List of Jurisdictions Eligible for Sale of Crime Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the list of jurisdictions in which there exists a critical crime insurance availability problem that has not been resolved at the local level and deletes from eligibility under the Federal Crime Insurance Program the jurisdictions of Alabama, Connecticut, Georgia, and Puerto Rico, making their citizens ineligible to purchase Federal crime insurance policies against burglary and robbery losses on and after October 1, 1992. The Federal Insurance Administrator has determined there is no longer a critical crime insurance availability problem in these jurisdictions.

Additionally, the Federal Insurance Administrator has consulted with various officials of the Territory of the Virgin Islands. They have provided evidence that a crime insurance market availability problem exists and the proposed rule further amends the list of eligible jurisdictions to include the Virgin Islands.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3440.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of 12 U.S.C. 1749bbb–17, on the basis of the Administrator's continuing review of the extent of any critical problem of crime insurance availability in the various jurisdictions. This action follows contact with Alabama, Connecticut, Georgia, Puerto Rico, and the Virgin Islands.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis. This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

EO 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

EO 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 81

Crime insurance.

Accordingly, 44 CFR Part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 81.1 is amended by revising paragraph (b)(1) to read as follows:

§ 81.1 States eligible for the sale of crime insurance.

* * * * *

(b)(1) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Virgin Islands,

and the states set forth in this paragraph have an unresolved critical crime insurance market unavailability problem requiring the operation of the Federal Crime Insurance Program therein as of October 1, 1992:

California	New Jersey
Florida	New York
Illinois	Pennsylvania
Kansas	District of Columbia
Maryland	Virgin Islands

* * * * *

Dated: July 10, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17130 Filed 7-20-92; 12:01 pm]

BILLING CODE 6718-18-M

Notices

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Radio and Television Broadcast Use Fee Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Radio and Television Broadcast Use Fee Advisory Committee will meet in Denver, Colorado, on August 3 and 4, 1992, from 8:30 a.m. to 4:30 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held August 3 and 4, 1992.

ADDRESSES: The meeting will be held at the Radisson Hotel, Century Room, 1550 Court Place, Denver, Colorado 80202.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

FOR FURTHER INFORMATION CONTACT: Brent Handley, Lands Staff, (202) 205–1264.

Dated: July 15, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92–17127 Filed 7–20–92; 12:01 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Application for Export License.

Form Number(s): BXA–622 and EAR Section 772.4.

Agency Approval Number: 0694–0005.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 11,751 reporting/recordkeeping hours.

Number of Respondents: 28,206.

Avg Hours Per Response: 25 minutes for reporting/2 minutes for recordkeeping.

Needs and Uses: This collection is required in compliance with U.S. export regulations. The information given by U.S. exporters provides the basis for decisions to grant export licenses for exports of goods and technology that are controlled for reasons of national security and foreign policy.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: Bureau of Export Administration.

Title: Commodity Classification and Information Requests.

Form Number(s): No form but requirements are found at EAR 770.11(d) and 770.1(g)(2).

Agency Approval Number: 0694–0048.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 3,661 hours.

Number of Respondents: 7,321.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This reporting requirement is either information regarding a specific export transaction or a complete description of the commodity for which the exporter is seeking classification. This information is used by BXA to make a determination on whether or not an export license is required.

Affected Public: Individuals; businesses or other for–profit institutions; non–profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Institute of Standards and Technology.

Title: Manufacturing Technology Centers.

Form Number(s): None.

Agency Approval Number: 0694-0005.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 800 hours.

Number of Respondents: 20.

Avg Hours Per Response: 40 hours.

Needs and Uses: In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k, the National Institute of Standards and Technology seeks to announce the availability of funds, announce a public briefing for potential applicants, and request proposals for up to three new Manufacturing Technology Centers. The purpose of the information collection is to secure sufficient information from proposers to make it possible for the National Institute of Standards and Technology to detemrine applicant eligibility and select awardees.

Affected Public: Non–profit institutions.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration.
Title: Fishermen's Contingency Fund.
Form Number(s): NOAA Forms 88–164 and 88–166.
Agency Approval Number: 0648–0082.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 13,650 hours.
Number of Respondents: 1,065.
Avg Hours Per Response: 10 hours.
Needs and Uses: The application and 15–day report forms are used by commerciala fishermen to file claims under Title IV of the Outer Continental Shelf Lands Act Amendments of 1987. The purpose of the fund is to compensate commercial fishermen for damages attributable to oil and gas activities on the OUter Continental Shelf.
Affected Public: Individuals; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration.
Title: Weather Modification Activities Report.
Form Number(s): 17–4, 17–4A, 17–4B.
Agency Approval Number: 0648–0025.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 240 reporting/recordkeeping hours.
Number of Respondents: 40.
Avg Hours Per Response: 1 hour for reporting; 5 hours for recordkeeping.
Needs and Uses: All non–federally sponsored attempts to modify the weather must be reported. The data are used to show trends in cloud seeding and weather modification activities in the U.S.
Affected Public: State or local governments; businesses or other for–profit institutions; small businesses or organizations.
Frequency: On occasion, recordkeeping.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Agency: Patent and Trademark Office.
Title: Changes in Patent and Trademark Assignment Practice.
Form Number(s): PTO–1594 and PTO–1595.
Agency Approval Number: 0651–0011.
Type of Request: Revision.
Burden: 148,810 hours.
Number of Respondents: 293,620.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The Patent and Trademark Office records assignments or documents related to ownership of patent and trademark cases. The Offfice will require a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.
Affected Public: Individuals; businesses or other for–profit institutions; federal agencies or employees; non–profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective Desk Officer listed above.

Dated: July 10, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–17131 Filed 7–20–92; 12:01 pm]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

Order No. 588; Resolution and Order Approving the Application of the Board of Harbor Commissioners of the City of Long Beach for Special-Purpose Subzone Status Datatape, Incorporated, Plant (High Density Digital Tape Recording Equipment) Pasadena, CA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, filed with the Foreign-Trade Zones Board (the Board) on May 24, 1991, requesting special-purpose subzone status at the high density digital tape recording equipment manufacturing plant of Datatape, Incorporated, in Pasadena, California, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, has made application (filed 5–24–91, FTZ Docket 30–91, 56 FR 25661, 6–5–91) to the Board for authority to establish a special-purpose subzone at the high density digital tape recording equipment manufacturing plant of Datatape, Incorporated, in Pasadena, California;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone at the Datatape, Incorporated, plant in Pasadena, California, designated on the records of the Board as Foreign-Trade Subzone 50D, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28.

Signed at Washington, DC, this 13th day of July 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates; Foreign-Trade Zones Board.

[FR Doc. 92-17154 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-802]

Industrial Belts and Components and Parts Thereof From Italy; Amendment of Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On March 9, 1992, the Department of Commerce published the final results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Italy. The review covered one manufacturer/exporter of this merchandise, Pirelli Trasmissional Industriali, S.p.A. (Pirelli), and the period February 1, 1989 through May 31, 1990. Based on the correction of clerical errors, we have changed the margin for Pirelli from 68.2 percent to 60.38 percent.

EFFECTIVE DATE: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1992, the Department of Commerce (the Department published in the **Federal Register** (57 FR 8295) the final results of its administrative review of the antidumping duty order on industrial belts from Italy (54 FR 25313, June 14, 1989).

After publication of our final results, the petitioner alleged that clerical errors had been made regarding the U.S. price for several exporter's sales price (ESP) transactions and the duplication of transactions included in a particular data set of the ESP computer program instructions. We agree and have corrected these errors.

Amended Final Results of Review

As a result of our correction of the clerical errors, we have determined that a weighed-average margin of 60.38 percent exists for Pirelli. In our original finals results, as the best information available (BIA), we applied the weighted-average ESP margin of 78.69 percent to ESP sales for which Pirelli failed to provide information regarding sales of such or similar merchandise in the home market. This rate was used because it was the highest weighted-average margin in the history of the proceeding. The ESP margin which results after making the clerical corrections is not the highest in the proceeding.

The rate from the investigation of sales-at-less-than-fair-value is now the highest rate in the proceeding and, therefore, has been used as BIA for the amended final results. This rate is 74.90 percent (54 FR 15483, April 18, 1989).

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the weighted-average margin of 60.38 percent. The Department will issue appraisement instructions directly to the Custom Service.

Because the final results for a period of review more recent than the review period covered by this notice have been issued, the dumping margin determined in this amended final results of review will have no impact on the current cash deposit rate. As provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act), the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Pirelli Trasmissioni Industriali, S.p.A. of estimated antidumping duties based on the final rate published for the company's most recent administrative review period. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any previously reviewed firm, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recent period for which a review has been completed, shall be required.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 16, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17155 Filed 7-20-92; 8:45 am]

BILLING CODE 3510-DS-M

Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of first meeting of the Latin America/Caribbean Business Promotion Council.

SUMMARY: The Caribbean Basin Business Promotion Council was re-established on May 3, 1991, and renamed the Latin America/Caribbean Business Promotion Council. The Council was re-established to advise the Secretary of Commerce and the Agency for International Development Administrator on matters pertinent to the implementation of the Caribbean Business Initiative (CBI), the Andean Trade Initiative (ATI), and the Enterprise for the Americas.

TIME AND PLACE: August 7, 1992 from 10 a.m. to 4:30 p.m. The meeting will take place at the Main Commerce Building, room 6808, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

AGENDA:

1. Introductory presentations and administrative matters.
2. Briefings on BCI, ATI, Enterprise for the Americas and the North America Free Trade Agreement.
3. Discussion and formulation of Council work plan.
4. Other matters as appropriate.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Approximately fifteen seats will be available for the public. Seats will be available on a first come first-served basis. Please notify Margaret Almazan at 202/377-0841 of your intent to attend.

FOR FURTHER INFORMATION CONTACT: Margaret Almazan, Latin America/

Caribbean Business Development Center, Main Commerce Building, room 1235, Washington, DC 20230.

Dated: July 15, 1992.

Walter M. Bastian,

Director, Latin America/Caribbean Business Development Center.

[FR Doc. 92-17107 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DA-M

Minority Business Development Agency

Pilot MEGA Center Applications: States of Wisconsin, Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, and Michigan; Correction

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: In notice document Volume 57, No. 118, beginning on page 27215 in the issue of Thursday, June 18, 1992, make the following correction:

On page 27215 in the second full paragraph of the third column, the second sentence incorrectly stated that client fees were restricted to the Basic Service Component of the Pilot MEGA Center. This same sentence should read as follows: To assist in this effort, the Pilot MEGA Center may charge client fees for all management and technical assistance (M&TA) rendered under the award.

Dated: July 16, 1992.

Bharat Bhargava,

Associate Director.

[FR Doc. 92-17156 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council, Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Large Pelagics Committee will meet on August 4–6, 1992, at the Showboat Hotel & Casino, 801 Boardwalk, Atlantic City, NJ. (telephone: 609 343–4000—.

The Large Pelagics Committee will begin its meeting at 1:30 p.m. on August 4, and adjourn at 4 p.m. The Council will begin its regular meeting on August 5, and adjourn on August 6 at approximately 1 p.m. In addition to reviewing committee reports, the Council is scheduled to adopt squid-mackerel-butterfish specifications for 1993, hear a presentation on New Jersey artificial reefs, and consider other fishery matters as deemed necessary. The Council may go into closed session (not open to the public), to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: July 15, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17129 Filed 7-20-92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101–627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the South Atlantic Fishery Management Council (South Atlantic Council) has revised its SOPP, which was originally published in the **Federal Register** on August 23, 1977 (42 FR 163). Interested parties may obtain a copy of the South Atlantic Council's revised SOPP by contacting Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: July 15, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17128 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

July 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on July 23, 1992, you are directed to amend the directive dated January 7, 1992 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
331	791,353 dozen pairs.
334	89,103 dozen.
335	130,558 dozen.
336/636	315,541 dozen.
338/339	925,204 dozen.
340/640	2,091,480 dozen.
341	1,797,372 dozen.
342/642	310,973 dozen.
347/348	1,559,340 dozen.
363	18,409,350 numbers.
369-S [2]	1,233,991 kilograms.
634	253,325 dozen.
638/639	1,174,112 dozen.
645/646	285,844 dozen.
647/648	980,718 dozen.
847	495,929 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

[2] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17108 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DR-F

Settlement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Guatemala

July 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated June 26, 1992, between the Governments of the United States and Guatemala establishes, among other things, an import limit for wool textile products in Category 448 for the periods July 1, 1992 through December 31, 1992, January 1, 1993 through December 31, 1993 and January 1, 1994 through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for the period beginning on July 1, 1992 and extending through December 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 9111, published on March 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs dated November 9, 1989 and June 26, 1992, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding (MOU) dated June 26, 1992, between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 23, 1992 , entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Guatemala and exported during the six-month period beginning on July 1, 1992 and extending through December 31, 1992, in excess of 41,729 dozen.

Textile products in Category 448 which have been exported to the United States prior to July 1, 1992 shall not be subject to this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the MOU's dated November 9, 1989 and June 26, 1992, between the Governments of the United States and Guatemala.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17105 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DR-F

Establishment and Amendment of Import Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending import limits and amending visa requirements.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent consultations the Governments of the United States and Thailand agreed to establish specific limits for Category 669–P for the periods March 25, 1992 through December 31, 1992; and January 1, 1993 through December 31, 1993. Also, the two governments agreed to increase the 1991-1993 calendar year base limits for Categories 359–H/659–H.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish and amend limits for Categories 669–P and 359–H/659–H for the 1992 periods. The existing visa requirements are being amended to require a visa for part-Categories 669–P and 669–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991; 57 FR 2713, published on January 23, 1992; and 57 FR 13713, published on April 17, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 24, 1992, you are directed to increase the current limit for Categories 359–H/659–H [1] to 930,060 kilograms [2].

Also, you are directed to establish a limit at 3,081,967 kilograms [3] for Category 669–P [4] for the period which began on March 25, 1992 and extends through December 31, 1992.

For visa purposes, you are directed to amend the directive dated January 16, 1992, to require a visa for textile products in part-Categories 669–P and 669–O [5], produced or manufactured in Thailand and exported from Thailand on and after September 1, 1992.

Goods in Category 669 which are produced or manufactured in Thailand and exported from Thailand during the period September 1, 1992 through September 30, 1992 may be visaed as 669, 669–P or 669–O. Goods in Category 669 produced or manufactured in Thailand and exported from Thailand on and after October 1, 1992 must be visaed as 669–P or 669–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17153 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DR-F

[1] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1991.

[3] The limit has not been adjusted to account for any imports exported after March 24, 1992.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

Request for Public Comments on Bilateral Textile Consultations with the Government of Qatar on Certain Cotton and Man-Made Fiber Textile Products

July 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories for which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 30, 1992, under the terms of Section 204 of the agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Qatar with respect to cotton and man-made fiber men's and boys' woven shirts, produced or manufactured in Qatar.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Qatar, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Qatar and exported during the twelve-month period which began on June 30, 1992 and extends through June 29, 1993, at a level of not less than 282,683 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Qatar.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration. Comments received will be considered in the context of the consultations with the Government of Qatar.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Oman

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

June 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Qatar reached 282,683 dozen during the year ending March 1992, almost three times the 102,229 dozen imported during the year ending in March 1991. During the first three months of 1992, imports of Category 340/640 from Qatar reached 140,002 dozen, almost 6 times the 23,942 dozen imported during the same period a year earlier and 84 percent of Qatar's total calendar year 1991 Category 340/640 import level.

The sharp and substantial increase in Category 340/640 imports from Qatar is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,797,000 dozen in 1991. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, reaching 7,155,498 dozen during the first three months of 1992, 26 percent above the level imported during the January-March 1991 period. If Category 340/640 imports continue to grow at this rate, they will reach a record 28,620,000 dozen in calendar year 1992.

The ratio of imports to domestic production increased from 157 percent in 1988 to 203 percent in 1991, while the domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. If imports continue to increase at their current rate of growth and domestic production remains at the 1991 level, the ratio of imports to domestic production would increase to 243 percent and the domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts would fall to 29 percent in 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 78 percent of Category 340/640 imports from Qatar during the year ending March 1992 entered the U.S. under HTSUSA numbers 6205.20.2050—men's yarn dyed cotton shirts that are not napped, and not corduroy, 6205.20.2065—other men's cotton shirts, other than yarn dyed, and 6205.30.2070—other men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-17103 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD, Commercial Activities Inventory Report and Five Year Review Schedule Fiscal Year 1991

AGENCY: DoD.

ACTION: Notice.

SUMMARY: This notice announces the publication of the DoD Commercial Activities Inventory Report and Five Year Review Schedule for Fiscal Year 1991. This document may be obtained by calling (202) 512-2413 or by writing to the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402. Refer to stock number 008-000-00600-8, and enclose a check in the amount of $26.00.

SUPPLEMENTARY INFORMATION: This document is published under the provisions of OMB Circular A-76, which requires the Department of Defense to publish an annual inventory report of all commercial activities. The Office of Management and Budget also requires that the Department of Defense publish a five year schedule for reviewing all in-house commercial activities. The purpose of the review is to determine whether the in-house method of operation should continue or whether a cost comparison should be performed to determine the most cost effective method of operation.

Dated: July 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-17110 Filed 7-20-92; 12:01 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-669-000, et al.]

Florida Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 14, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER92-669-000]

Take notice that on June 26, 1992, Florida Power & Light Company (FPL) tendered for filing Amendment Number Four to the Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utilities Commission, City of New Smyrna Beach, Florida (Amendment). FPL requests that the Amendment be made effective June 29, 1992.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER92-594-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on

July 6, 1992, tendered for filing an additional Service Agreement which provides for service pursuant to Central Vermont's FERC Electric Tariff No. 5.

CVPS requests the Commission to waive its notice of filing requirements to permit the Service Agreements to become effective in accordance with their individual terms.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Company

[Docket No. ER92-661-000]

Take notice that on June 19, 1992, United Illuminating Company tendered for filing a Notice of Cancellation of Docket No. ER92-434-000 and Docket No. ER92-453-000.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. West Texas Utilities Company

[Docket No. EL91-57-001]

Take notice that on June 15, 1992, West Texas Utilities Company tendered for filing a corrected Exhibit A, Sheet 1, of Rate Schedule COC-6 Partial Requirements for Wholesale Service to the City of Coleman.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER92-692-000]

Take notice that on July 6, 1992, Western Resources, Inc. (Western Resources) tendered for filing proposed changes to the following Rate Schedules:

FERC No.	Other party
225	Altamont, KS.
227	Axtell, KS.
248	Centralia, KS.
231	Chapman, KS.
253	Elwood, KS.
230	Enterprise, KS.
236	Eudora, KS.
228	Marion, KS.
222	Muscotah, KS.
233	Robinson, KS.
212	Scranton, KS.
224	Severance, KS.
244	St. Marys, KS.
245	Vermillion, KS.
210	Waterville, KS.

Western Resources states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 10, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Polk Power Partners, L.P., a Delaware Limited Partnership

[Docket No. QF92-54-001]

On July 9, 1992, Polk Power Partners, L.P., a Delaware Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information related to the ownership and liquid C02 plant. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER92-92-670-000]

Take notice that on June 26, 1992, Florida Power Corporation (Florida Power) filed a Construction Agreement between itself and Tampa Electric Company (TECO) providing for the construction of a new interconnection point at TECO's Cabbage Hill Substation and a revised Exhibit A to their Contract for Interchange Service adding Cabbage Hill to the list of interconnection points. Florida Power requests that the filing be allowed to become effective on August 26, 1992.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Power Inc.

[Docket No. ER92-694-000]

Take notice that on July 6, 1992, Iowa Power Inc. (Iowa Power) tendered for filing a Letter Agreement between Iowa Power and Indianola Waterworks and Electric Light and Power Board of Trustees (Indianola) dated June 11, 1992.

Iowa Power states that the Letter Agreement is a negotiated agreement providing for transmission service to Indianola's water well in Iowa Power's service territory.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Hampshire

[Docket No. ER92-690-000]

Take notice that on July 6, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing proposed changes in its rate schedules pursuant to which PSNH provides wholesale electric service to three New Hampshire municipal electric systems customers: Town of Ashland, Town of Wolfeboro, and New Hampton Village Precinct (collectively the "Municipal Customers").

PSNH proposes to increase the base rates included in each of the Resale Service Agreements between PSNH and the three Municipal Customers to recover a portion of the increased decommissioning charges required to be paid by PSNH as of April 1, 1992 pursuant to an order issued by the new Hampshire Decommissioning Financing Committee. PSNH also proposes to amend the Resale Service Agreements to provide a method to collect the increased charges on a basis of forecasted kilowatt-hour sales to be adjusted annually to reflect actual kilowatt-hour sales. PSNH states that the method proposed to be made applicable to the Municipal Customers is the same method PSNH uses to collect similar decommissioning costs from its retail customers.

PSNH request waiver of the Commission's customary notice requirements in order to make the proposed rate changes effective on July 1, 1992. PSNH states that the implementation of the proposed rate changes as of July 1, 1992 will result in consistent rate treatment for its retail and wholesale customers, and that waiver of the Commission's notice will not affect any other parties.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER92-696-000]

Take notice that on July 6, 1992, Western Resources, Inc. (Western Resources) tendered for filing proposed changes to the following Rate Schedules:

FERC No.	Other party
250	Burlingame, KS.
241	Clay Center, KS.
242	Ellinwood, KS.
209	Herington, KS.
226	Holton, KS.
240	Larned, KS.
211	Minneapolis, KS.
249	Osage City, KS
235	Sabetha, KS.
243	Stafford, KS.
237	Sterling, KS.
252	St. John, KS.

Western Resources states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 10, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17082 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

[Docket Nos. ST92-3679-000 Through ST92-4199-000]

K N Energy; Self-Implementing Transactions

July 15, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, section 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a) (1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311 (a) (2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-3679	KN Energy, Inc	LL & E Gas Marketing, Inc	05-01-92	G-S	5,128	N	F	04-01-92	04-01-93
ST92-3680	El Paso Natural Gas Co	Saguaro Power Co	05-01-92	G-S	20,600	Y	F	04-01-92	Indef.
ST92-3681	El Paso Natural Gas Co	Meridian Oil Trading Inc	05-01-92	G-S	154,500	Y	I	04-01-92	Indef.
ST92-3682	El Paso Natural Gas Co	Sunrise Energy Co	05-01-92	G-S	30,900	Y	F	04-01-92	Indef.
ST92-3683	El Paso Natural Gas Co	Texaco Inc	05-01-92	G-S	180,250	Y	F	04-01-92	Indef.
ST92-3684	El Paso Natural Gas Co	United States Borax & Chemical Corp.	05-01-92	G-S	19,570	Y	F	04-02-92	Indef.
ST92-3685	El Paso Natural Gas Co	Enron Gas Marketing, Inc	05-01-92	G-S	206,000	Y	I	04-19-92	Indef.
ST92-3686	El Paso Natural Gas Co	NGC Transportation, Inc	05-01-92	G-S	150,000	Y	I	04-18-92	Indef.
ST92-3687	El Paso Natural Gas Co	Meridian Oil Trading Inc	05-01-92	G-S	170,100	Y	I	04-08-92	05-01-93
ST92-3688	El Paso Natural Gas Co	Amoco Energy Trading Corp	05-01-92	G-S	61,800	Y	I	04-01-92	Indef.
ST92-3689	El Paso Natural Gas Co	Meridian Oil Trading Inc	05-01-92	G-S	206,000	Y	I	04-02-92	Indef.
ST92-3690	El Paso Natural Gas Co	Los Angeles Dept. of Water & Power.	05-01-92	G-S	37,080	Y	F	04-01-92	Indef.
ST92-3691	El Paso Natural Gas Co	Mobil Natural Gas Inc	05-01-92	G-S	20,600	Y	F	04-01-92	Indef.
ST92-3692	El Paso Natural Gas Co	NGC Transportation, Inc	05-01-92	G-S	100,000	Y	I	04-01-92	Indef.
ST92-3693	El Paso Natural Gas Co	Meridian Oil Marketing Inc	05-01-92	G-S	103,000	A	F	04-01-92	Indef.
ST92-3694	El Paso Natural Gas Co	Meridian Oil Trading Inc	05-01-92	G-S	206,000	Y	I	04-01-92	Indef.
ST92-3695	South Georgia Natural Gas Co	Engelhard Corp	05-01-92	G-S	1,000	N	I	05-01-92	09-30-95
ST92-3696	Sea Robin Pipeline Co	Ledco, Inc	05-01-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-3697	United Gas Pipe Line Co	Div. of Nukem, Inc	05-01-92	G-S	104,800	N	I	04-21-92	08-19-92
ST92-3698	Delhi Gas Pipeline Corp	Transcontinental Gas P/L Corp	05-01-92	C	5,000	N	I	04-01-92	Indef.
ST92-3699	Delhi Gas Pipeline Corp	Transcontinental Gas P/L Corp	05-01-92	C	5,000	N	I	04-01-92	01-01-99

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST92-3700	Williams Natural Gas Co	KPL Gas Service	05-01-92	G-S	75,000	N	F	04-01-92	Indef.
ST92-3701	Western Gas Interstate Co	Southern Union Gas Co	05-01-92	B	15,300	N	F	04-01-92	02-28-11
ST92-3702	Williston Basin Inter. P/L Co	KN Gas Marketing, Inc	05-01-92	G-S	30,000	N	I	04-02-92	12-31-92
ST92-3703	Williston Basin Inter. P/L Co	Western Gas Resources, Inc	05-01-92	G-S	147,900	A	I	04-03-92	05-23-93
ST92-3704	Williston Basin Inter. P/L Co	Hiland Partners	05-01-92	G-S	76,500	A	I	04-02-92	05-31-93
ST92-3705	Panhandle Eastern Pipe Line Co.	Kansas Power and Light Co	05-01-92	G-S	10,000	N	I	04-01-92	Indef.
ST92-3706	Panhandle Eastern Pipe Line Co.	PPG Industries, Inc	05-01-92	G-S	4,273	N	F	04-01-92	Indef.
ST92-3707	Panhandle Eastern Pipe Line Co.	Indiana Gas Co	05-01-92	G-S	50,000	N	F	04-01-92	Indef.
ST92-3708	Panhandle Eastern Pipe Line Co.	Archer Daniels Midland Co	05-01-92	G-S	5,000	N	I	04-01-92	Indef.
ST92-3709	Panhandle Eastern Pipe Line Co.	Indiana Gas Co	05-01-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-3710	Panhandle Eastern Pipe Line Co.	Archer Daniels Midland Co	05-01-92	G-S	5,000	N	I	04-01-92	Indef.
ST92-3711	Panhandle Eastern Pipe Line Co.	Archer Daniels Midland Co	05-01-92	G-S	5,000	N	I	04-01-92	Indef.
ST92-3712	Panhandle Eastern Pipe Line Co.	Gastrak Corp	05-01-92	G-S	1,000	N	I	04-02-92	Indef.
ST92-3713	Transwestern Pipeline Co	Enron Oil & Gas Co	05-01-92	G-S	65,000	Y	I	04-01-92	Indef.
ST92-3714	Transwestern Pipeline Co	Pacific Gas & Electric Co	05-01-92	B	150,000	N	I	04-02-92	Indef.
ST92-3715	Transwestern Pipeline Co	Pacific GAs & Electric Co	05-01-92	B	150,000	N	I	04-02-92	Indef.
ST92-3716	Transwestern Pipeline Co	Seagull Marketing Services, Inc	05-01-92	G-S	25,000	N	I	04-02-92	Indef.
ST92-3717	Transwestern Pipeline Co	Gasmark, Ltd	05-01-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-3718	Transwestern Pipeline Co	Enron Gas Marketing, Inc	05-01-92	G-S	200,000	Y	I	04-03-92	Indef.
ST92-3719	Transwestern Pipeline Co	Pacific Gas & Electric Co	05-01-92	B	200,000	N	I	04-03-92	Indef.
ST92-3720	Transwestern Pipeline Co	NGC Transportation, Inc	05-01-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-3721	Transwestern Pipeline Co	Production Gathering Co	05-01-92	G-S	2,000	N	I	04-01-92	Indef.
ST92-3722	Southern Natural Gas Co	Seagull Marketing Services	05-01-92	G-S	50,000	N	I	04-03-92	Indef.
ST92-3723	Southern Natural Gas Co	Atlanta Gas Light Co	05-01-92	G-S	200,000	N	I	04-01-92	Indef.
ST92-3724	Southern Natural Gas Co	Stone Savannah River	05-01-92	G-S	30,000	N	I	04-01-92	Indef.
ST92-3725	Southern Natural Gas Co	City of La Grange	05-01-92	G-S	4,000	N	I	04-17-92	05-01-93
ST92-3726	Southern Natural Gas Co	Atlanta Gas Light Co	05-01-92	G-S	1,000	N	I	04-01-92	Indef.
ST92-3727	Southern Natural Gas Co	Energy Dynamics, Inc	05-01-92	G-S	50,000	N	I	03-27-92	Indef
ST92-3728	Arkla Energy Resources	Swift Energy Co	05-01-92	G-S	15,000	N	I	03-01-92	Indef.
ST92-3729	Arkla Energy Resources	Webb Energy Resources, Inc	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3730	Arkla Energy Resources	Helmerich & Payne Energy	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3731	Arkla Energy Resources	Crown Pipeline Co	05-01-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3732	Arkla Energy Resources	Semco Energy Services	05-01-92	G-S	15,000	N	I	03-01-92	Indef.
ST92-3733	Arkla Energy Resources	Nicor Exploration Co	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3734	Arkla Energy Resources	Hanna Oil and Gas Co	05-01-92	G-S	7,000	N	I	03-01-92	Indef.
ST92-3735	Arkla Energy Resources	Vintage Gas, Inc	05-01-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-3736	Arkla Energy Resources	Sonat Exploration	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3737	Arkla Energy Resources	North Canadian Gas Marketing	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3738	Arkla Energy Resources	GPC Marketing Co	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3739	Arkla Energy Resources	Concorde Resource Corp	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3740	Arkla Energy Resources	Park Avenue Exploration	05-01-92	G-S	125	N	I	03-01-92	Indef.
ST92-3741	Arkla Energy Resources	Sunbelt Oilfield Services	05-01-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3742	Arkla Energy Resources	Buttonwood Petroleum	05-01-92	G-S	2,000	N	I	03-01-92	Indef.
ST92-3743	Arkla Energy Resources	American Exploration	05-01-92	G-S	5,000	N	I	03-01-92	Indef.
ST92-3744	Arkla Energy Resources	Conoco	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3745	Arkla Energy Resources	Arkla Energy Marketing Co	05-01-92	G-S	500,000	A	I	03-01-92	Indef.
ST92-3746	Arkla Energy Resources	Gas Energy Development	05-01-92	G-S	15,000	N	I	03-01-92	Indef.
ST92-3747	Arkla Energy Resources	Arkla Exploration Co	05-01-92	G-S	150,000	Y	I	03-01-92	Indef.
ST92-3748	Arkla Energy Resources	Mobil Natural Gas	05-01-92	G-S	100,000	N	I	03-01-92	Indef.
ST92-3749	Arkla Energy Resources	Production Gathering Co	05-01-92	G-S	1,000	N	I	03-01-92	Indef.
ST92-3750	Arkla Energy Resources	Unocal	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3751	Arkla Energy Resources	Highland Energy Co	05-01-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3752	Arkla Energy Resources	Revere Corp	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3753	Arkla Energy Resources	Mitchell Energy Corp	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3754	Arkla Energy Resources	Phillips Petroleum Co	05-01-92	G-S	30,000	N	I	03-01-92	Indef.
ST92-3755	Arkla Energy Resources	Zinke & Trumbo	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3756	Arkla Energy Resources	Twister Transmission Co	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3757	Arkla Energy Resources	TK Drilling Corp	05-01-92	G-S	500,000	N	I	03-01-92	Indef.
ST92-3758	Arkla Energy Resources	Triumph Gas Marketing	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3759	Arkla Energy Resources	Weiser Brown Oil Co	05-01-92	G-S	2,700	N	I	03-01-92	Indef.
ST92-3760	Arkla Energy Resources	Ward Gas Marketing	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3761	Arkla Energy Resources	UMC Petroleum Corp	05-01-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3762	Arkla Energy Resources	PSEC Inc	05-01-92	G-S	2,000	N	I	03-01-92	Indef.
ST92-3763	Arkla Energy Resources	Ralley Pipeline Corp	05-01-92	G-S	15,000	N	I	03-01-92	Indef.
ST92-3764	Arkla Energy Resources	Matrix Gas Marketing	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3765	Arkla Energy Resources	HCG Energy Corp	05-01-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-3766	Arkla Energy Resources	South Miami Gas Co., Inc	05-01-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-3767	Arkla Energy Resources	OXY USA, Inc	05-01-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-3768	Arkla Energy Resources	Kaiser Francis Oil Co	05-01-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3769	Arkla Energy Resources	I P Petroleum Co	05-01-92	G-S	5,000	N	I	03-01-92	Indef.
ST92-3770	Arkla Energy Resources	Eberly and Meade, Inc	05-01-92	G-S	10,000	N	I	03-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-3771	Arkla Energy Resources	Anadarko Trading	05-01-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3772	Arkla Energy Resources	Murphy Oil USA, Inc	05-01-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3773	Arkla Energy Resources	Marathon Oil Co	05-01-92	G-S	150,000	N	I	03-01-92	Indef.
ST92-3774	CNG Transmission Corp	O & R Energy, Inc	05-04-92	G-S	100,000	N	I	04-11-92	Indef.
ST92-3775	Trunkline Gas Co	Mid-America Pipeline Co	05-04-92	G-S	830	N	F	04-06-92	Indef.
ST92-3776	Lone Star Gas Co	El Paso Natural Gas Co	05-04-92	C	50,000	N	I	04-01-92	Indef.
ST92-3777	Lone Star Gas Co	Transco Gas Pipeline	05-04-92	C	50,000	N	I	04-11-92	Indef.
ST92-3778	ONG Transmission Co	Northern Natural Gas Co	05-04-92	C	30,000	N	I	04-21-92	Indef.
ST92-3779	ONG Transmission Co	Arkla Energy Resources	05-04-92	C	50,000	N	I	04-21-92	Indef.
ST92-3780	ONG Transmission Co	Northern Natural Gas Co	05-04-92	C	25,000	N	I	02-01-92	Indef.
ST92-3781	Transok, Inc	Northern Natural Gas Co	05-04-92	C	50,000	N	I	12-01-91	Indef.
ST92-3782	Transok, Inc	ANR Pipeline Co	05-04-92	C	50,000	N	I	10-01-91	Indef.
ST92-3783	Transok, Inc	Panhandle Eastern Pipe Line Co.	05-04-92	C	20,000	N	I	04-04-92	Indef.
ST92-3784	Enogex Inc	Northern Natural Gas Co	05-04-92	C	50,000	N	I	04-01-92	Indef.
ST92-3785	Enogex Inc	Arkla Energy Resources	05-04-92	C	50,000	N	I	04-01-92	Indef.
ST92-3786	Enogex Inc	ANR Pipeline Co	05-04-92	C	50,000	N	I	04-17-92	Indef.
ST92-3787	Enogex Inc	Northern Natural Gas Co	05-04-92	C	50,000	N	I	04-01-92	Indef.
ST92-3788	Enogex Inc	Arkla energy Resources	05-04-92	C	50,000	N	I	04-02-92	Indef.
ST92-3789	Tennessee Gas Pipeline Co	National Fuel Gas Dist. Co	05-04-92	B	26,000	N	I	04-03-92	Indef.
ST92-3790	Tennessee Gas Pipeline Co	Access Energy Corp	05-04-92	G-S	500,000	N	I	04-02-92	Indef.
ST92-3791	Tennessee Gas Pipeline Co	Energy Marketing Exchange, Inc.	05-04-92	G-S	200,000	N	I	04-01-92	Indef.
ST92-3792	Tennessee Gas Pipeline Co	Lockport Energy Associates, L.P.	05-04-92	G-S	28,000	N	I	04-02-92	Indef.
ST92-3793	Tennessee Gas Pipeline Co	Energy Marketing Exchange, Inc.	05-04-92	G-S	102,500	N	I	04-05-92	Indef.
ST92-3794	Tennessee Gas Pipeline Co	Entrade Corp	05-04-92	G-S	1,310,000	N	I	04-16-92	Indef.
ST92-3795	Columbia Gas Transmission Corp.	GTE Products Corp	05-05-92	G-S	3,000	Y	F	05-01-92	Indef.
ST92-3796	Tennessee Gas Pipeline Co	Texas-Ohio Gas, Inc	05-05-92	G-S	75,000	N	I	04-16-92	Indef.
ST92-3797	Mississippi River Trans. Corp	Transok, Inc	05-05-92	B	15,000	A	I	01-01-92	Indef.
ST92-3798	National Fuel Gas Supply corp	National Fuel Gas Supply Corp	05-05-92	B	15,000	N	I	04-06-92	03-30-93
ST92-3799	Northwest Pipeling Corp	Chevron U.S.A. Inc	05-05-92	G-S	100,000	N	I	01-01-92	Indef.
ST92-3800	Northwest Pipeline Corp	Kimball Energy Co	05-05-92	G-S	150,000	N	I	01-01-92	Indef.
ST92-3801	Equitrans, Inc	O & R Energy	05-05-92	G-S	77,480	N	I	12-03-91	Indef.
ST92-3802	Equitrans, Inc	Industrial Energy Services Co	05-05-92	G-S	25,818	N	I	12-01-91	Indef.
ST92-3803	Equitrans, Inc	O & R Energy	05-05-92	G-S	5,060	N	I	09-01-92	Indef.
ST92-3804	Equitrans, Inc	Consolidated Fuel Corp	05-05-92	G-S	1,214	N	I	12-02-91	Indef.
ST92-3805	Equitrans, Inc	Industrial Energy Services Co	05-05-92	G-S	3,532	N	I	01-01-92	Indef.
ST92-3806	Colorado Interstate Gas Co	Coastal Chem, Inc	05-06-92	G-S	21,700	Y	F	05-01-92	08-31-95
ST92-3807	Colorado Interstate Gas Co	Western Natural Gas and Trans. Corp.	05-06-92	G-S	3,000	N	F	05-01-92	04-30-95
ST92-3808	Channel Industries Gas Co	Natural Gas P/L Co. of America.	05-06-92	C	300,000	A	I	04-30-92	Indef.
ST92-3809	Channel Industries Gas Co	Trunkline Gas Co	05-06-92	C	300,000	A	I	04-17-92	Indef.
ST92-3810	Questar Pipeline Co	Tecovas Partners L.P	05-07-92	G-S	15,000	N	I	04-01-92	01-1-93
ST92-3811	Natural Gas P/L Co. of America.	Catex Energy, Inc	05-07-92	G-S	93,000	N	I	04-08-92	Indef.
ST92-3812	Northern Border Pipeline Co	Wes Cana Energy Marketing (U.S.).	05-06-92	G-S	50,000	N	I	04-10-92	01-31-94
ST92-3813	Transwestern Pipeline Co	Enron Gas Marketing, Inc	05-07-92	G-S	500,000	A	I	04-09-92	Indef.
ST92-3814	Transwestern Pipeline Co	Pacific Gas & Electric Co	05-07-92	B	50,000	N	I	04-09-92	Indef.
ST92-3815	Transwestern Pipeline Co	Pacific Gas & Electric Co	05-07-92	B	50,000	N	I	04-09-92	Indef.
ST92-3816	Transwestern Pipeline Co	NGC Transportation, Inc	05-07-92	G-S	50,000	N	I	04-11-92	Indef.
ST92-3817	Transwestern Pipeline Co	Pacific Gas & Electric Co	05-07-92	B	50,000	N	I	04-14-92	Indef.
ST92-3818	Transwestern Pipeline Co	AMOCO Energy Trading Corp	05-07-92	G-S	100,000	N	I	04-11-92	Indef.
ST92-3819	Tennessee Gas Pipeline Co	Superior Natural Gas Corp	05-07-92	G-S	50,000	N	I	04-07-92	Indef.
ST92-3820	United Gas Pipe Line Co	Shell Gas Trading Co	05-07-92	G-S	62,880	N	I	04-27-92	08-25-92
ST92-3821	United Gas Pipe Line Co	Vesta Energy Co	05-07-92	G-S	104,800	N	I	04-28-92	08-26-92
ST92-3822	United Gas Pipe Line Co	Gulf Gas Utilities Co	05-07-92	G-S	85	N	F	04-27-92	08-04-92
ST92-3823	Mississippi River Trans. Corp	Texaco Gas Marketing	05-07-92	G-S	30,000	Y	I	05-01-92	Indef.
ST92-3824	Mississippi River Trans. Corp	American Central Gas Companies Inc.	05-07-92	G-S	10,000	Y	I	05-01-92	Indef.
ST92-3825	Colorado Interstate Gas Co	Vegas Co	05-07-92	G-S	10,000	N	I	05-01-92	Indef.
ST92-3826	Colorado Interstate Gas Co	Amoco Energy Trading Corp	05-07-92	G-S	100,000	N	I	03-01-92	Indef.
ST92-3827	Colorado Interstate Gas Co	Coastal Gas Marketing Co	05-07-92	G-S	100,000	N	I	03-24-92	Indef.
ST92-3828	Colorado Interstate Gas Co	Mountain Gas Resources	05-07-92	G-S	20,000	N	I	03-03-92	02-28-95
ST92-3829	Williams Natural Gas Co	Grand Valley Gas Co	05-07-92	G-S	35,000	N	I	04-07-92	Indef.
ST92-3830	East Tennessee Natural Gas Co.	Industrial Energy Services Co	05-07-92	G-S	50,000	N	I	04-28-92	Indef.
ST92-3831	Northwest Pipeline Corp	Gasmark, Ltd	05-07-92	G-S	15,000	N	I	04-02-92	Indef.
ST92-3832	Tarpon Transmission Co	Diamond Shamrock Offshore Partners.	05-07-92	G-S	15,000	N	I	02-01-92	Indef.
ST92-3833	Tarpon Transmission Co	Arco Natural Gas Marketing, Inc..	05-07-92	G-S	5,000	N	I	10-01-91	Indef.
ST92-3834	Arkla Energy Resources	Vesta Energy Co	05-08-92	G-S	2,800	N	F	01-01-92	Indef.
ST92-3835	Arkla Energy Resources	Union Natural Gas Co	05-08-92	G-S	4,000	N	F	01-01-92	Indef.
ST92-3836	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	05-08-92	G-S	188,565	Y	I	04-08-92	09-30-92

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-3837	Northern Natural Gas Co	Interstate Power Co	05-08-92	B	5,902	N	F	04-16-92	10-31-92
ST92-3838	Northern Natural Gas Co	Wisconsin Gas Co	05-08-92	B	1,100	N	F	04-14-92	10-31-92
ST92-3839	Northern Natural Gas Co	Peoples Natural Gas Co	05-08-92	B	50,000	N	F/I	02-25-92	Indef.
ST92-3840	Northern Natural Gas Co	Equitable Resources Marketing Co.	05-08-92	G-S	100,000	N	F/I	04-15-92	Indef.
ST92-3841	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	05-08-92	G-S	170,000	A	I	04-08-92	05-01-92
ST92-3842	Northern Natural Gas Co	Virginia Dept. of Public Utilities	05-08-92	B	500	N	F	05-01-92	08-31-92
ST92-3843	Texas Eastern Transmission Corp.	Midcon Marketing Corp	05-11-92	G-S	400,000	N	I	04-15-92	Indef.
ST92-3844	Texas Eastern Transmission Corp.	CNG Transmission Corp	05-11-92	G-S	400,000	N	I	03-01-92	Indef.
ST92-3845	Texas Eastern Transmission Corp.	Unigas Energy, Inc	05-11-92	G-S	200,000	N	I	04-01-92	Indef.
ST92-3846	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co	05-11-92	G-S	41,364	N	I	01-25-92	Indef.
ST92-3847	Texas Eastern Transmission Corp.	Anadarko Trading Co	05-11-92	G-S	400,000	N	I	04-16-92	Indef.
ST92-3848	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc	05-08-92	G-S	25,000	N	I	04-10-92	Indef.
ST92-3849	Panhandle Eastern Pipe Line Co.	Angas, Inc	05-08-92	G-S	40	N	I	04-12-92	Indef.
ST92-3850	Colorado Interstate Gas Co	Montana Power Co	05-08-92	B	15,000	N	I	03-12-92	Indef.
ST92-3851	Colorado Interstate Gas Co	Aquila Energy Marketing Corp	05-08-92	G-S	100,000	N	I	03-01-92	Indef.
ST92-3852	Colorado Interstate Gas Co	LL & E Gas Marketing, Inc	05-08-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-3853	Colorado Interstate Gas Co	Montana Power Co	05-08-92	B	15,000	N	I	03-01-92	02-28-93
ST92-3854	Colorado Interstate Gas Co	Montana Power Co	05-08-92	B	15,000	N	I	03-04-92	Indef.
ST92-3855	Colorado Interstate Gas Co	Texaco Gas Marketing Inc	05-08-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3856	Colorado Interstate Gas Co	Questar Energy Co	05-08-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-3857	Arkla Energy Resources	Ethyl Corp	05-08-92	G-S	2,700	N	F	01-01-92	Indef.
ST92-3858	Natural Gas P/L Co. of America.	Marathon Oil Co	05-08-92	G-S	30,000	N	I	04-01-92	Indef.
ST92-3859	Natural Gas P/L Co. of America.	Trunkline Gas Co	05-08-92	G	50,000	N	I	04-01-92	Indef.
ST92-3860	Natural Gas P/L Co. of America.	Energy Marketing Exchange, Inc.	05-08-92	G-S	50,000	N	I	03-28-92	Indef.
ST92-3861	Natural Gas P/L Co. of America.	Chevron USA, Inc	05-08-92	G-S	20,000	N	I	10-19-92	Indef.
ST92-3862	Natural Gas P/L Co. of America.	Citrus Marketing, Inc	05-08-92	G-S	40,000	N	I	04-10-92	Indef.
ST92-3863	United Texas Transmission Co	Winnie Pipeline Co	05-08-92	C	5,000	N	I	03-01-92	Indef.
ST92-3864	ANR Pipeline Co	Madison Gas and Electric Co	05-08-92	G-S	16,364	N	F	04-08-92	Indef.
ST92-3865	ANR Pipeline Co	Associated Natural Gas Co	05-08-92	G-S	968	N	F	04-08-92	Indef.
ST92-3866	ANR Pipeline Co	Anchor Hocking Corp	05-08-92	G-S	764	N	F	04-11-92	Indef.
ST92-3867	ANR Pipeline Co	Consolidated Papers, Inc	05-08-92	G-S	1,018	N	F	04-09-92	Indef.
ST92-3868	ANR Pipeline Co	Semco Pipeline Co	05-08-92	B	150,000	N	I	04-23-92	Indef.
ST92-3869	ANR Pipeline Co	Battle Creek Gas Co	05-08-92	B	1,000	N	I	04-14-92	Indef.
ST92-3870	ANR Pipeline Co	NGC Transportation, Inc	05-08-92	G-S	200,000	N	I	04-18-92	Indef.
ST92-3871	Kern River Gas Transmission Co.	Gasmark, Ltd	05-11-92	G-S	17,500	N	I	04-18-92	Indef.
ST92-3872	Kern River Gas Transmission co.	Grand Valley Gas Co	05-08-92	G-S	300,000	N	I	04-17-92	Indef.
ST92-3873	Northern Natural Gas Co	Enogex Services Corp	05-11-92	G-S	50,000	N	F/I	04-15-92	Indef.
ST92-3874	Northern Border Pipeline Co	Mobil Natural Gas Inc	05-11-92	G-S	100,000	Y	I	04-09-92	01-14-93
ST92-3875	Northern Natural Gas Co	Enrow Gas Marketing, Inc	05-11-92	G-S	2,250	A	F	05-01-92	Indef.
ST92-3876	East Texas Gas Systems	United Gas Pipe Line Co	05-11-92	C	100,000	N	I	04-10-92	Indef.
ST92-3884	Lone Star Gas Co	Natural Gas P/L Co. of America.	05-11-92	C	18,000	N	I	04-16-92	Indef.
ST92-3885	Westar Transmission Co	KN Energy Co	05-07-92	G-S	9,200	Y	I	02-01-91	Indef.
ST92-3886	ValeroTransmission, L.P.	Northern Natural Gas Co	05-12-92	C	75,000	N	I	01-01-91	Indef.
ST92-3887	Valero Transmission, L.P	El Paso Natural Gas Co	05-12-92	C	150,000	Y	I	03-01-91	11-01-95
ST92-3888	Tennessee Gas Pipeline Co	Eagle Natural Gas Co	05-12-92	G-S	40,000	N	I	04-15-91	Indef.
ST92-3889	Tennessee Gas Pipeline Co	Coronado Transmission Co	05-12-92	G-S	1,000	N	I	04-15-92	Indef.
ST92-3890	Columbia Gas Transmission Corp.	North Central Oil Corp	05-12-92	G-S	5,000	N	I	05-10-92	Indef.
ST92-3891	Columbia Gas Transmission Corp.	The Oxford Oil Co	05-12-92	G-S	1,276	N	I	05-10-92	Indef.
ST92-3892	United Gas Pipe Line Co	Energy Maketing Exchange, Inc	05-12-92	G-S	78,600	N	I	04-22-92	08-20-92
ST92-3893	Transcontinental Gas P/L Corp	Washington Gas Light Co., Et Al.	05-12-92	B	300,000	N	F/I	04-13-92	Indef.
ST92-3894	Natural Gas P/L Co. of America.	CNG Producing Co	05-12-92	G-S	2,000	N	I	04-01-92	Indef.
ST92-3895	Stingray Pipeline Co	Polaris Pipeline Corp	05-13-92	G-S	100,000	N	I	04-04-92	Indef.
ST92-3896	Questar Pipeline Co	Mountain Gas Resources, Inc	05-13-92	G-S	25,000	N	I	04-13-92	06-30-92
ST92-3897	Gas Gathering Corp	Apache Corp	05-13-92	G-S	1,000	N	I	04-01-92	Indef.
ST92-3898	Mid Louisiana Gas Co	Vernon E. Faulconer, Inc	05-13-92	G-S	500	N	I	04-11-92	03-31-93
ST92-3899	Valero Transmission, L.P	Natural Gas P/L Co of America	05-13-92	C	20,000	N	I	05-01-92	Indef.
ST92-3900	Valero Transmission, L.P	United Gas Pipe Line Co	05-13-92	C	15,900	N	I	04-23-92	Indef.
ST92-3901	Valero Transmission, L.P	Natural Gas P/L Co. of America.	05-13-92	C	10,000	N	I	04-22-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/ A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-3902	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	05-13-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-3903	Tennessee Gas Pipeline Co	Cornerstone Production Corp	05-13-92	G-S	150,000	N	I	05-01-92	Indef.
ST92-3904	Tennesse Gas Pipeline Co	Three Rivers Pipeline Co	05-13-92	B	80,000	N	I	04-13-92	Indef.
ST92-3905	Tennessee Gas Pipeline Co	Gasmark, Inc	05-13-92	G-S	30,000	N	I	05-01-92	Indef.
ST92-3906	Ong Transmission Co	ANR Pipeline Co	05-13-92	C	75,000	N	I	05-01-92	Indef.
ST92-3907	Ong Transmission Co	ANR Pipeline Co	05-13-92	C	75,000	N	I	05-01-92	Indef.
ST92-3908	Ong Transmission Co	Phillips Gas Pipeline Co	05-13-92	C	50,000	N	I	05-01-92	Indef.
ST92-3909	Ong Transmission Co	Phillips Gas Pipeline Co	05-13-92	C	30,000	N	I	05-01-92	Indef.
ST92-3910	Ong Transmission Co	Natural Gas P/L Co of America	05-13-92	C	50,000	N	I	05-01-92	Indef.
ST92-3911	Pacific Gas Transmission Co	Pacific Gas and Electric Co	05-13-92	B	107,377	N	I	04-30-92	Indef.
ST92-3912	Pacific Gas Transmission Co	Bridge Gas U.S.A., Inc	05-13-92	G-S	100,000	N	I	04-23-92	Indef.
ST92-3913	Pacific Gas Transmission Co	Direct Energy Marketing Inc	05-13-92	G-S	60,000	N	I	04-05-92	Indef.
ST92-3914	Pacific Gas Transmission Co	Enron Gas Marketing, Inc	05-13-92	G-S	97,613	N	I	04-01-92	Indef.
ST92-3915	Pacific Gas Transmission Co	Enron Gas Marketing, Inc	05-13-92	B	97,613	N	I	04-01-92	Indef.
ST92-3916	United Gas Pipe Line Co	Unocal Exploration Corp	05-13-92	G-S	26,200	N	I	05-01-92	08-29-92
ST92-3917	United Gas Pipe Line Co	MG Natural Gas Corp	05-13-92	G-S	30,000	N	I	05-01-92	08-29-92
ST92-3918	United Gas Pipe Line Co	Scana Hydrocarbons, Inc	05-13-92	G-S	10,000	N	I	05-01-92	08-29-92
ST92-3919	United Gas Pipe Line Co	Meridian Oil Trading Inc	05-13-92	G-S	104,800	N	I	04-01-92	07-30-92
ST92-3920	United Gas Pipe Line Co	Shell Gas Trading Co	05-13-92	G-S	57,640	N	I	05-01-92	08-29-92
ST92-3921	Ong Transmission Co	Norhern Natural Gas Co	05-14-92	C	100,000	N	I	04-15-92	Indef.
ST92-3922	Tennessee Gas Pipeline Co	Industrial Energy Services Co	05-14-92	G-S	15,000	N	I	04-28-92	Indef.
ST92-3923	Tennessee Gas Pipeline Co	Meridian Maketing and Trans. Corp.	05-14-92	G-S	2,000	N	I	04-16-92	Indef.
ST92-3924	United Gas Pipe Line Co	Energy Marketing Exchange, Inc.	05-14-92	G-S	78,600	N	I	04-29-92	08-27-92
ST92-3925	United Gas Pipe Line Co	Entex, Div. of Arkla	05-14-92	G-S	75,000	N	I	05-05-92	09-02-92
ST92-3926	Texas Gas Transmission Corp	Stellar Gas Co	05-14-92	G-S	20,000	N	I	05-01-92	Indef.
ST92-3927	Texas Gas Transmission Corp	Indiana Gas Co., Inc	05-14-92	G-S	10,000	N	I	05-01-92	Indef.
ST92-3928	Texas Gas Transmission Corp	Seaboard Farms of Ky, Inc	05-14-92	B	450	N	I	04-30-92	Indef.
ST92-3929	Texas Gas Transmission Corp	CMS Gas Marketing	05-14-92	G-S	100,000	Y	I	05-01-92	Indef.
ST92-3930	Texas Gas Transmission Corp	Woodward Marketing, Inc	05-14-92	G-S	50,000	N	I	04-28-92	Indef.
ST92-3931	Black Marlin Pipeline Co	Houston Pipeline Co	05-15-92	B	50,000	A	I	04-30-92	Indef.
ST92-3932	Williston Basin Inter. P/L Co	Chevron USA, Inc	05-15-92	G-S	26,250	A	I	04-15-92	08-31-92
ST92-3933	Tennessee Gas Pipeline Co	Centran Corp	05-15-92	G-S	250,000	N	I	05-02-92	Indef.
ST92-3934	Tennessee Gas Pipeline Co	City of Hohenwald	05-15-92	B	2,000,000	A	I	03-01-92	Indef.
ST92-3935	Tennessee Gas Pipeline Co	Texas Southeastern Gas Co	05-15-92	B	2,000,000	A	I	12-07-92	Indef.
ST92-3936	Tennessee Gas Pipeline Co	Ozark Pipeline Co	05-15-92	B	2,000,000	A	I	10-24-91	Indef.
ST92-3938	Tennessee Gas Pipeline Co	DSourthern Natural Gas Co	05-15-92	B	2,000,000	A	I	07-21-89	Indef.
ST92-3938	Tennessee Gas Pipeline Co	Direct Gas Supply Corp	05-15-92	G-S	51,550	N	I	05-01-92	Indef.
ST92-3939	Midwestern Gas Transmission Co.	Fina Natural Gas Co	05-15-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-3940	Columbia Gulf Transmission Co	Access Energy Corp	05-15-92	G-S	100,000	N	I	05-05-92	Indef.
ST92-3941	Columbia Gulf Transmission Co	Williams Gas Marketing Co	05-15-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-3942	Columbia Gulf Transmission Co	CMS Gas Marketing Co	05-15-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-3943	Columbia Gulf Transmission Co	Krumpp & Associates	05-15-92	G-S	40,000	N	I	05-01-92	Indef.
ST92-3944	Columbia Gulf Transmission Co	Entrade Corp	05-15-92	G-S	50,000	N	I	05-02-92	Indef.
ST92-3945	Oasis Pipe Line Co	Northern Natural Gas Co	05-15-92	C	100,000	N	I	01-24-92	Indef.
ST92-3946	Oasis Pipe Line Co	El Paso Natural Gas Co	05-15-92	C	100,000	N	I	01-18-92	Indef.
ST92-3947	Oasis Pipe Line Co	Northern Natural Gas Co	05-15-92	C	100,000	N	I	03-01-92	Indef.
ST92-3948	Questar Pipeline Co	Mountain Fuel Supply Co	05-15-92	B	34,656	N	I	05-01-92	Indef.
ST92-3949	Questar Pipeline Co	Fuel Resources Development Co.	05-15-92	G-S	1,350	N	I	05-01-92	Indef.
ST92-3950	Oasis Pipe Line Co	El Paso Natural Gas Co	05-15-92	C	100,000	N	I	01-01-92	Indef.
ST92-3951	Panhandle Eastern Pipe Line Co.	Amoco Production Co	05-18-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-3952	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc	05-18-92	G-S	75,000	N	I	04-16-92	Indef.
ST92-3953	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	05-18-92	B	3,000	N	I	04-22-92	Indef.
ST92-3954	Tennessee Gas Pipeline Co	Aquila Energy Marketing Corp	05-18-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-3955	Tennessee Gas Pipeline Co	Midcon Services Corp	05-18-92	G-S	400,000	N	I	05-01-92	Indef.
ST92-3956	Tennessee Gas Pipeline Co	Mississippi Fuel Co	05-18-92	B	2,000,000	A	I	02-01-92	Indef.
ST92-3957	Tennessee Gas Pipeline Co	City of Centerville	05-18-92	B	2,000,000	A	I	03-01-92	Indef.
ST92-3958	Tennessee Gas Pipeline Co	City of Portland	05-18-92	B	2,000,000	A	I	01-15-92	Indef.
ST92-3959	Kern River Gas Transmission Co.	City of Los Angeles, Water & Power.	05-18-92	G-S	300,000	Y	I	04-24-92	10-31-93
ST92-3960	Columbia Gas Transmission Corp.	Industrial Energy Services, Inc	05-18-92	G-S	340	Y	F	05-01-92	Indef.
ST92-3961	Columbia Gas Transmission Corp.	PPG Industries, Inc	05-18-92	G-S	20,000	Y	I	05-01-92	Indef.
ST92-3962	Sabine Pipe Line Co	Texas-Ohio Gas, Inc	05-18-92	C	30,000	N	I	03-01-92	Indef.
ST92-3963	Neches Pipeline System	Natural Gas P/L Co. of America.	05-18-92	C	50,000	N	I	05-01-92	11-01-99
ST92-3964	Valero Transmission, L.P	Trunkline Pipeline Co	05-18-92	C	25,000	N	I	05-01-92	Indef.
ST92-3965	Valero Transmission, L.P	Florida Gas Transmission Co	05-18-92	C	30,000	N	I	02-01-92	Indef.
ST92-3966	Houston Pipeline Co	Florida Gas Transmission Co	05-18-92	C	20,000	N	I	05-01-92	Indef.
ST92-3967	Houston Pipeline Co	Sabine Pipeline Co	05-18-92	C	20,000	N	I	02-12-92	Indef.
ST92-3968	Houston Pipeline Co	Transcontinental Gas P/L Corp	05-18-92	C	50,000	N	I	02-22-92	Indef.
ST92-3969	Houston Pipeline Co	United Gas Pipe Line Co	05-18-92	C	100,000	N	I	03-28-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-3970	Houston Pipeline Co	United Gas Pipe Line Co	05-18-92	C	100,000	N	I	04-07-92	Indef.
ST92-3971	Houston Pipeline Co	Texas Eastern Transmission Corp.	05-18-92	C	100,000	N	I	01-12-92	Indef.
ST92-3972	Houston Pipeline Co	Trunkline Gas Co	05-18-92	C	100,000	N	I	01-12-92	Indef.
ST92-3973	Houston Pipeline Co	Sabine Pipeline Co	05-18-92	C	100,000	N	I	03-05-92	Indef.
ST92-3974	Houston Pipeline Co	Northern Natural Gas Co	05-18-92	C	50,000	N	I	04-01-92	Indef.
ST92-3975	Houston Pipeline Co	United Gas Pipe Line Co	05-18-92	C	100,000	N	I	02-01-92	Indef.
ST92-3976	Houston Pipeline Co	Tennessee Gas Pipeline Co	05-18-92	G-ST	8,500/17,000	N	I	01-01-92	03-31-93
ST92-3977	Houston Pipeline Co	Natural Gas P/L Co. of America.	05-18-92	C	100,000	N	I	03-28-92	Indef.
ST92-3978	Houston Pipeline Co	Transcontinental Gas P/L Corp	05-18-92	C	20,000	N	I	03-01-92	Indef.
ST92-3979	Houston Pipeline Co	Natural Gas P/L Co. of America.	05-18-92	C	100,000	N	I	03-01-92	Indef.
ST92-3980	Houston Pipeline Co	Florida Gas Transmission Co	05-18-92	C	20,000	N	I	03-01-92	Indef.
ST92-3981	Houston Pipeline Co	Florida Gas Transmission Co	05-18-92	C	20,000	N	I	03-01-92	Indef.
ST92-3982	Houston Pipeline Co	Northern Natural Gas Co	05-18-92	C	50,000	N	I	03-02-92	Indef.
ST92-3983	Houston Pipeline Co	Natural Gas P/L Co. of America.	05-18-92	C	10,000	N	I	02-09-92	Indef.
ST92-3984	Houston Pipeline Co	Transcontiental Gas P/L Corp	05-18-92	G-ST	10,000/20,000	N	F	02-02-92	07-31-92
ST92-3985	Houston Pipeline Co	Phillips Gas Pipeline Co	05-18-92	C	15,000	N	I	04-01-92	Indef.
ST92-3986	Houston Pipeline Co	Northern Natural Gas Co	05-18-92	C	15,000	N	I	04-01-92	Indef.
ST92-3987	Tennessee Gas Pipeline Co	MG Natural Gas Corp	05-18-92	G-S	160,000	N	I	05-02-92	Indef.
ST92-3988	Tennessee Gas Pipeline Co	Stellar Gas Co	05-18-92	G-S	65,000	N	I	05-01-92	Indef.
ST92-3989	Tennessee Gas Pipeline Co	Appalachian Gas Sales	05-18-92	G-S	15,000	N	I	05-01-92	Indef.
ST92-3990	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing Inc	05-18-92	G-S	100,000	N	I	04-24-92	Indef.
ST92-3991	Transcontinental Gas P/L Corp	Philadelphia Gas Works	05-18-92	B	4,516,425	N	I	05-03-90	Indef.
ST92-3992	Columbia Gas Transmission Corp.	Baltimore Gas and Electric Co	05-18-92	B	50,000	N	I	05-01-92	Indef.
ST92-3993	Columbia Gas Transmission Corp.	Consolidated Gas Marketing, Inc.	05-18-92	G-S	1,300	Y	I	05-01-92	Indef.
ST92-3994	Natural Gas P/L Co. of America.	Quantum Chemical Corp	05-18-92	G-S	2,010	N	F	09-30-94	Indef.
ST92-3995	Natural Gas P/L Co. of America.	Tennessee Gas Pipeline Co	05-18-92	G	48,000	N	F	05-16-91	06-29-08
ST92-3996	Canyon Creek Compression Co	Amoco Energy Trading Corp	05-18-92	G-S	60,000	N	I	05-01-92	Indef.
ST92-3997	Canyon Creek Compression Co	Union Pacific Fuels, Inc	05-18-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-3998	Questar Pipeline Co	Enron Gas Marketing, Inc	05-18-92	G-S	100,000	N	I	05-09-92	02-01-93
ST92-3999	El Paso Natural Gas Co	Texaco Exploration and Prod. Inc.	05-18-92	G-S	2,060	N	I	04-25-92	Indef.
ST92-4000	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc	05-19-92	G-S	20,000	N	I	05-01-92	Indef.
ST92-4001	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05-19-92	G-S	50	N	I	05-01-92	Indef.
ST92-4002	Northwest Pipeline Corp	IGI Resources, Inc	05-19-92	G-S	70,000	N	I	01-01-92	Indef.
ST92-4003	Northwest Pipeline Corp	Grand Valley Gas Co	05-19-92	G-S	200,000	N	I	01-01-92	Indef.
ST92-4004	Panhandle Eastern Pipe Line Co.	Mountain Iron & Supply Co	05-19-92	G-S	5,000	N	I	05-01-92	Indef.
ST92-4005	Panhandle Eastern Pipe Line Co.	Mountain Iron & Supply Co	05-19-92	G-S	5,000	N	I	05-01-92	Indef.
ST92-4006	Panhandle Eastern Pipe Line Co.	Martin Exploration Management	05-19-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4007	Panhandle Eastern Pipe Line Co.	City of Lapel	05-19-92	G-S	1,000	N	I	05-01-92	Indef.
ST92-4008	Panhandle Eastern Pipe Line Co.	Amoco Energy Trading Co	05-19-92	G-S	130,000	N	I	05-01-92	Indef.
ST92-4009	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05-19-92	G-S	60	N	I	05-01-92	Indef.
ST92-4010	Southern Natural Gas Co	O&R Energy, Inc	05-19-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4011	Southern Natural gas Co	Mississippi Chemical Corp	05-19-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4012	Southern Georgia Natural Gas Co.	City of Nashville	05-19-92	G-S	500	N	I	05-08-92	10-04-97
ST92-4013	Southern Georgia Natural Gas Co.	City of Fort Gains	05-19-92	G-S	250	N	I	05-08-92	02-28-97
ST92-4014	Southern Natural Gas Co	Energy Dynamics, Inc	05-19-92	G-S	50,000	N	I	05-08-92	Indef.
ST92-4015	Southern Natural Gas Co	Energy Dynamics, Inc	05-19-92	G-S	50,000	N	I	05-06-92	Indef.
ST92-4016	Southern Natural Gas Co.	Engelhard corp	05-19-92	G-S	1,008	N	I	05-01-92	09-30-95
ST92-4017	South Georgia Natural Gas Co	County Board of Decatur	05-19-92	G-S	150	N	I	05-09-92	03-01-93
ST92-4018	South Georgia Natural Gas Co	City of Andersonville	05-19-92	G-S	61	N	I	05-08-92	03-01-93
ST92-4019	South Georgia Natural Gas Co	City of Richland	05-19-92	G-S	250	N	I	05-08-92	02-28-97
ST92-4020	South Georgia Natural Gas Co	City of Ocilla	05-19-92	G-S	429	N	I	05-08-92	02-28-97
ST92-4021	South Georgia Natural Gas Co	Albany Water, Gas & Light Comm.	05-19-92	G-S	13,081	N	I	05-08-92	03-01-93
ST92-4022	South Georgia Natural Gas Co	City of Unadilla	05-19-92	G-S	500	N	I	05-08-92	01-03-93
ST92-4023	South Georgia Natural Gas Co	City of Shellman	05-19-92	G-S	185	N	I	05-08-92	02-28-97
ST92-4024	South Geogia Natural Gas Co	City of Cordele	05-19-92	G-S	1,400	N	I	05-09-92	03-01-93
ST92-4025	South Georgia Natural Gas Co	City of Tifton	05-19-92	G-S	2,651	N	I	04-01-92	03-01-97

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4026	Llano, Inc	Phillips Petroleum Co	05-19-92	G-S	7,800	N	I	04-18-92	03-31-97
ST92-4027	Sea Robin Pipeline Co	Cater Energy, Inc	05-19-92	C	50,000	N	I	04-18-92	Indef.
ST92-4028	South Georgia Natural Gas Co	City of Douglas	05-19-92	G-S	2,008	N	I	05-09-92	03-01-97
ST92-4029	Northern Natural Gas Co	Iowa Electric Light and Power Co.	05-1-992	B	25,000	N	F/I	04-30-92	Indef.
ST92-4030	Northern Natural Gas Co	NGC Transportation, Inc	05-19-92	G-S	500,000	N	F/I	04-30-92	Indef.
ST92-4031	Tennessee Gas Pipeline Co	Stellar Gas Co	05-19-92	G-S	1,000,000	N	I	05-09-92	Indef.
ST92-4032	Tennessee Gas Pipeline Co	Vigas Corp	05-20-92	G-S	110,000	N	I	03-01-92	Indef.
ST92-4033	Tennessee Gas Pipeline Co	Woodward Marketing, Inc	05-20-92	G-S	200,000	N	I	04-23-92	Indef.
ST92-4034	Tennessee Gas Pipeline Co	Energy Marketing Exchange, Inc.	05-20-92	G-S	102,500	N	I	04-23-92	Indef.
ST92-4035	Transwestern Pipeline Co	Windward Energy & Marketing Co.	05-20-92	G-S	75,000	N	I	04-11-92	Indef.
ST92-4036	Transwestern Pipeline Co	American Hunter Exploration Ltd.	05-20-92	G-S	270,000	N	I	04-11-92	Indef.
ST92-4037	Transwestern Pipeline Co	Enron Gas Marketing, Inc	05-20-92	G-S	500,000	Y	I	04-20-92	Indef.
ST92-4038	Northern Natural Gas Co	Union Exploration Corp	05-20-92	G-S	15,000	N	F/I	05-01-92	Indef.
ST92-4039	Northern Natural Gas Co	Hunt Oil Co	05-20-92	G-S	5,000	N	F/I	05-01-92	Indef.
ST92-4040	Northern Natural Gas Co	Equitable Resources Marketing Co.	05-20-92	G-S	100,000	N	F/I	05-01-92	Indef.
ST92-4041	Northern Natural Gas Co	Wisconsin Power & Light Co	05-20-92	B	20,000	N	F/I	05-01-92	Indef.
ST92-4042	Northern Natural Gas Co	Mercado Gas Services, Inc	05-20-92	G-S	7,500	N	F/I	05-02-92	Indef.
ST92-4043	Superior Offshore P/L Co	Baltimore Gas & Electric	05-21-92	B	30,000	N	I	05-01-92	Indef.
ST92-4044	Superior Offshore P/L Co	Cincinnati Gas & Electric	05-21-92	B	30,000	N	I	05-01-92	Indef.
ST92-4045	Questar Pipeline Co	Grand Valley Gas Co	05-21-92	G-S	145,820	N	I	04-21-92	Indef.
ST92-4046	Michigan Gas Storage Co	Michigan Gas Co	05-21-92	B	60,000	Y	I	03-24-92	Indef.
ST92-4047	Consumers Power Co	Michigan Gas Co	05-21-92	G-HT	60,000	N	I	03-24-92	Indef.
ST92-4048	Transwestern Pipeline Co	Access Energy Corp	05-21-92	G-S	50,000	N	I	05-05-92	Indef.
ST92-4049	Transwestern Pipeline Co	Plains Farmers Gas Co-op	05-21-92	G-S	5,000	N	I	05-01-92	Indef.
ST92-4050	Transwestern Pipeline Co	Mercado Gas Services, Inc	05-21-92	G-S	25,000	N	I	05-01-92	Indef.
ST92-4051	Transwestern Pipeline Co	Citizens Utilities Co	05-21-92	B	25,000	N	F	04-27-92	Indef.
ST92-4052	Transwestern Pipeline Co	Citizens Utilities Co	05-21-92	B	25,000	N	F	04-27-92	Indef.
ST92-4053	Transwestern Pipeline Co	Integrated Services, Inc	05-21-92	B	1,500	N	I	04-28-92	Indef.
ST92-4054	Transwestern Pipeline Co	BP Gas Marketing Co	05-21-92	G-S	30,000	N	I	05-02-92	Indef.
ST92-4055	Trunkline Gas Co	Texon Corp	05-21-92	G-S	7,000	N	I	04-01-92	Indef.
ST92-4056	Acadian Gas Pipeline System	Texas Eastern Trans. Corp	05-22-92	C	15,000	N	I	05-01-92	Indef.
ST92-4057	Acadian Gas Pipeline System	Sabine Pipeline Co	05-22-92	C	40,000	N	I	05-01-92	Indef.
ST92-4058	Paiute Pipeline Co	Winnemucca Farms, Inc	05-22-92	G-S	800	N	I	04-01-92	Indef.
ST92-4059	Tennessee Gas Pipeline Co	Wes Cana Energy Marketing, Inc.	05-22-92	G-S	1,500	N	F	05-01-92	07-30-92
ST92-4060	Natural Gas P/L Co. of America.	Access Energy Corp	05-22-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4061	Natural Gas P/L Co. of America.	Inland Steel Co	05-22-92	G-S	10,000	N	I	08-01-92	05-31-93
ST92-4062	Natural Gas P/L Co. of America.	Entex	05-22-92	B	10,000	N	F	05-01-92	11-30-94
ST92-4063	Natural Gas P/L Co. of America.	Entex	05-22-92	B	10,000	N	F	05-01-92	11-30-94
ST92-4064	Great Lakes Gas Trans. L.P	Kimball/Trippe Energy Associates.	05-22-92	G-S	150,000	N	I	04-23-92	Indef.
ST92-4065	Williams Natural Gas Co	Western Gas Resources, Inc	05-22-92	G-S	100,000	N	I	04-24-92	Indef.
ST92-4066	Texas Eastern Transmission Corp.	Gemco Gas Marketing, Inc	05-26-92	G-S	120,000	N	I	05-01-92	Indef.
ST92-4067	Texas Eastern Transmission Corp.	Maxus Exploration Co	05-26-92	G-S	50,000	N	I	05-02-92	Indef.
ST92-4068	Texas Eastern Transmission Corp.	Arco Natural Gas Marketing Co	05-26-92	G-S	100,000	N	I	05-06-92	Indef.
ST92-4069	Texas Eastern Transmission Corp.	Vesta Energy Co	05-26-92	G-S	130,000	N	I	05-01-92	Indef.
ST92-4070	Texas Eastern Transmission Corp.	BHP Gas Marketing Co	05-26-92	G-S	5,000	N	I	05-01-92	Indef.
ST92-4071	Kern River Gas Transmission Co.	Inland Container Corp	05-26-92	G-S	25,000	N	I	04-26-92	Indef.
ST92-4072	Kern River Gas Transmission Co.	Arco Natural Gas Marketing, Inc.	05-26-92	G-S	50,000	N	I	04-30-92	Indef.
ST92-4073	Kern River Gas Transmission Co.	Pan-Alberta Gas (U.S.) Inc	05-26-92	G-S	300,000	N	I	04-28-92	Indef.
ST92-4074	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	05-26-92	G	2,000,000	N	I	05-01-92	Indef.
ST92-4075	Tennessee Gas Pipeline Co	City of Akron	05-26-92	G-S	4,000	N	I	05-08-92	Indef.
ST92-4076	Tennessee Gas Pipeline Co	NGC Transportation, Inc	05-26-92	G-S	25,000	N	I	04-26-92	Indef.
ST92-4077	Tennessee Gas Pipeline Co	Access Energy Corp	05-26-92	G-S	500,000	N	I	05-03-92	Indef.
ST92-4078	Natural Gas P/L Co. of America.	Anthem Energy Co	05-26-92	G-S	150,000	N	I	04-25-92	Indef.
ST92-4079	Colorado Interstate Gas Co	Helmerich & Payne Energy Ser., Inc.	05-26-92	G-S	20,000	N	F	04-01-92	Indef.
ST92-4080	Colorado Interstate Gas Co	Montana Power Co	05-26-92	B	15,000	N	I	04-01-92	Indef.
ST92-4081	Colorado Interstate Gas Co	Montana Power Co	05-26-92	B	15,000	N	I	04-01-92	Indef.
ST92-4082	Colorado Interstate Gas Co	Barrett Fuels Corp	05-26-92	G-S	15,000	N	I	04-01-92	Indef.
ST92-4083	Colorado Interstate Gas Co	Western Gas Resources, Inc	05-26-92	G-S	1,500	N	I	04-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4084	Colorado Interstate Gas Co	North Canadian Marketing Corp	05-26-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4085	Colorado Interstate Gas Co	Grand Valley Gas Co	05-26-92	G-S	50,000	N	I	04-22-92	Indef.
ST92-4086	Colorado Interstate Gas Co	Poliris Pipeline Co	05-26-92	G-S	75,000	N	I	04-01-92	Indef.
ST92-4087	Colorado Interstate Gas Co	Bridgegas U.S.A., Inc	05-26-92	G-S	50,000	N	I	04-25-92	Indef.
ST92-4088	Colorado Interstate Gas Co	Aquila Energy Marketing Corp	05-26-92	G-S	6,700	N	I	04-01-92	Indef.
ST92-4089	Colorado Interstate Gas Co	Mountain Gas Resources, Inc	05-26-92	G-S	50,000	N	I	04-02-92	Indef.
ST92-4090	Colorado Interstate Gas Co	Aquila Energy Marketing Corp	05-26-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4091	Kentucky West Virginia Gas Co	M.O.V. Oil, Inc	05-26-92	G-S	360	N	I	04-02-92	Indef.
ST92-4092	Kentucky West Virginia Gas Co	Newport Oil Corp	05-26-92	G-S	250	N	I	04-01-92	Indef.
ST92-4093	Columbia Gulf Transmission Co	Brooklyn Interstate Nat. Gas Corp.	05-26-92	G-S	30,000	N	I	04-13-92	Indef.
ST92-4094	Columbia Gulf Transmission Co	Yuma Gas Corp	05-26-92	G-S	70,000	N	I	04-08-92	Indef.
ST92-4095	Columbia Gulf Transmission Co	Transco Energy Marketing Co	05-26-92	G-S	200,000	N	I	04-01-92	Indef.
ST92-4096	Columbia Gulf Transmission Co	Virginia Electric & Power Co	05-26-92	G-S	75,000	N	I	04-06-92	Indef.
ST92-4097	Columbia Gas Transmission Corp.	Woodward Marketing, Inc	05-26-92	G-S	30,000	Y	I	04-15-92	Indef.
ST92-4098	Columbia Gas Transmission Corp.	Stand Energy Corp	05-25-92	G-S	30	Y	F	04-07-92	Indef.
ST92-4099	Columbia Gas Transmission Corp.	J.D. Drilling Co	05-26-92	G-S	3,001	N	I	04-10-92	Indef.
ST92-4100	Texas Gas Transmission Corp	Fina Natural Gas Co	05-26-92	G-S	50,000	Y	I	04-01-92	Indef.
ST92-4101	Texas Gas Transmission Corp	River Gas Co	05-26-92	G-S	3,073	N	F	04-01-92	Indef.
ST92-4102	Texas Gas Transmission Corp	Arkla Energy Resources	05-26-92	G	200,000	Y	I	04-01-92	Indef.
ST92-4103	Kern River Gas Transmission Co.	M.H. Whittier Corp	05-27-92	G-S	4,500	N	F	04-01-92	Indef.
ST92-4104	Texas Gas Transmission Corp	Entrade Corp	05-27-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-4105	Texas Gas Transmission Corp	Gasmark, Ltd	05-27-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4106	Texas Gas Transmission Corp	Texaco Gas Marketing, Inc	05-27-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4107	Texas Gas Transmission Corp	CNG Transmission Corp	05-27-92	G	40,000	N	I	05-06-92	Indef.
ST92-4108	Lone Star Gas Co	Natural Gas P/L Co. of America.	05-27-92	C	23,000	N	I	05-18-92	Indef.
ST92-4109	Louisiana Resources Pipeline Co.	Union Carbide Chemicals & Plastics.	05-27-92	C	50,000	N	I	01-01-92	Indef.
ST92-4110	Louisiana Resources Pipeline Co.	Columbia Gulf Transmission Co	05-27-92	C	30,000	N	I	05-01-92	Indef.
ST92-4111	Louisiana Resources Pipeline Co.	Louisiana Gas Pipeline Co., L.P	05-27-92	C	200,000	N	I	05-21-92	Indef.
ST92-4112	Louisiana Resources Pipeline Co.	Sea Robin Pipeline Co	05-27-92	C	50,000	N	I	05-07-92	Indef.
ST92-4113	Trunkline Gas Co	Western Gas Marketing, Inc	05-2-92	G-S	100,000	N	I	04-08-92	Indef.
ST92-4114	Northern Border Pipeline Co	Progas U.S.A., Inc	05-27-92	G-S	75,000	Y	I	05-01-92	04-30-94
ST92-4115	Northern Border Pipeline Co	Entrade Corp	05-27-92	G-S	98,000	Y	I	05-01-92	11-30-92
ST92-4116	Northern Border Pipeline Co	Hadson Gas Systems, Inc	05-27-92	G-S	100,000	Y	I	05-01-92	11-30-92
ST92-4117	Northern Border Pipeline Co	POCO Petroleums Ltd	05-27-92	G-S	75,600	Y	I	05-01-92	12-06-93
ST92-4118	Northern Border Pipeline Co	Unigas Energy In	05-27-92	G-S	100,000	Y	I	05-01-92	12-31-92
ST92-4119	Northern Border Pipeline Co	NGC Transportation, Inc	05-27-92	G-S	150,000	Y	I	05-01-92	11-30-93
ST92-4120	Northern Border Pipeline Co	Portage Energy Inc	05-27-92	G-S	245,000	Y	I	05-01-92	04-30-94
ST92-4121	Northern Border Pipeline Co	Salmon Resources, Ltd	05-27-92	G-S	30,000	Y	I	05-01-92	Indef.
ST92-4122	Northern Border Pipeline Co	POCO Petroleums Ltd	05-27-92	G-S	252,000	Y	I	05-01-92	04-30-94
ST92-4123	Northern Border Pipeline Co	Coastal Gas Marketing Co	05-27-92	G-S	100,000	Y	I	05-01-92	04-30-94
ST92-4124	Northern Border Pipeline Co	Enron Gas Marketing, Inc	05-27-92	G-S	300,000	Y	I	05-01-92	12-31-92
ST92-4125	Northern Border Pipeline Co	Cibola Corp	05-27-92	G-S	148,000	Y	I	05-01-92	12-31-93
ST92-4126	Northern Border Pipeline Co	Aquila Energy Marketing Corp	05-27-92	G-S	300,000	Y	I	05-01-92	11-30-93
ST92-4127	Northern Border Pipeline Co	Salmon Resources, Ltd	05-27-92	G-S	500,000	Y	I	05-01-92	11-30-93
ST92-4128	Northern Border Pipeline Co	Unigas Engery Inc	05-27-92	G-S	150,000	Y	I	05-01-92	04-30-94
ST92-4129	Northern Border Pipeline Co	Coastal Gas Marketing Co	05-27-92	G-S	200,000	Y	I	05-01-92	04-30-94
ST92-4130	Northern Border Pipeline Co	Unigas Corp	05-27-92	G-S	100,000	Y	I	05-01-92	11-24-92
ST92-4131	Northern Border Pipeline Co	Mobil Natural Gas Inc	05-27-92	G-S	200,000	Y	I	05-01-92	10-31-93
ST92-4132	Northern Border Pipeline Co	Enron Gas Marketing, Inc	05-27-92	G-S	100,000	Y	I	05-01-92	12-31-92
ST92-4133	Northern Border Pipeline Co	Gasmark, Inc	05-27-92	G-S	100,000	Y	I	05-01-92	04-30-94
ST92-4134	Colorado Interstate Gas Co	Williams Gas Marketing Co	05-27-92	G-S	30,000	N	I	04-01-92	03-31-93
ST92-4135	Colorado Interstate Gas Co	Montana Power Co	05-27-92	B	20,000	N	I	05-07-92	Indef.
ST92-4136	Colorado Interstate Gas Co	Western Gas Resources, Inc	05-27-92	G-S	1,000	N	I	04-01-92	Indef.
ST92-4137	Trunkline Gas Co	Valero Gas Marketing, L.P.	05-27-92	G-S	50,000	N	I	05-04-92	Indef.
ST92-4138	Trunkline Gas Co	Hadson Gas Systems, Inc	05-27-92	G-S	50,000	N	I	04-29-92	Indef.
ST92-4139	Trunkline Gas Co	Phibro Distributors Corp	05-27-92	G-S	100,000	N	I	04-01-92	Indef.
ST92-4140	Trunkline Gas Co	Midland Cogeneration Venture, L.P.	05-27-92	G-S	30,000	N	I	05-01-92	Indef.
ST92-4141	Northern Border Pipeline Co	Unigas Corp	05-27-92	G-S	100,000	Y	I	05-01-92	4-30-94
ST92-4141	Northern Border Pipeline Co	Enron Gas Marketing, Inc	05-27-92	G-S	250,000	Y	I	05-01-92	12-31-92
ST92-4143	Northern Border Pipeline Co	Poco Petroleums Ltd	05-27-92	G-S	75,600	Y	I	05-01-92	12-06-93
ST92-4144	Trunkline Gas Co	Enermax	05-27-92	G-S	100,000	N	I	05-01-92	Indef
ST92-4145	Trunkline Gas Co	Centran Corp	05-27-92	G-S	50,000	N	I	04-30-92	Indef
ST92-4146	Trunkline Gas Co	Eagle Natural Gas Co	05-27-92	G-S	20,000	N	I	05-01-92	Indef
ST92-4147	Trunkline Gas Co	Citrus Marketing, Inc	05-27-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4148	Trunkline Gas Co	Florida Gas Utility	05-27-92	G-S	100,000	N	I	04-28-92	Indef
ST92-4149	Trunkline Gas Co	Meridian Oil Trading, Inc	05-27-92	G-S	100,000	N	I	05-01-92	Indef
ST92-4150	Trunkline Gas Co	Equitable Resources Marketing Co.	05-27-92	G-S	50,000	N	I	05-01-92	Indef

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST92-4151	Trunkline Gas Co	Phillips Petroleum Co	05-27-92	G-S	80,000	N	I	05-01-92	Indef.
ST92-4152	Northern Natural Gas Co	Western Gas Marketing, Inc	05-27-92	G-S	70,000	N	F	05-09-92	Indef.
ST92-4153	United Texas Transmission Co	Natural Gas P/L Co. of America.	05-28-92	C	10,000	Y	I	05-08-92	Indef.
ST92-4154	United Texas Transmission Co	Natural Gas P/L Co. of America.	05-28-92	C	3,200	Y	I	04-01-92	Indef.
ST92-4155	Panhandle Eastern Pipeline Co	Michigan Gas Utilities Co	05-28-92	B	8,500	N	I	04-30-92	Indef.
ST92-4156	Trunkline Gas Co	Western Gas Marketing, Inc	05-28-92	G-S	100,000	N	I	05-05-92	Indef.
ST92-4157	Northwest Pipeline Co	ARCO Natural Gas Marketing, Inc.	05-28-92	G-S	70,000	N	F	05-07-92	Indef.
ST92-4158	Northwest Pipeline Co	Winnemucca Farms, Inc	05-28-92	G-S	800	N	I	04-29-92	Indef.
ST92-4159	Webb/Duval Gatherers	Texas Eastern Transmission Corp.	05-28-92	C	1,000	N	I	03-01-92	Indef.
ST92-4160	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp	05-29-92	G-S	50,000	N	I	02-01-92	01-31-93
ST92-4161	Tennessee Gas Pipeline Co	Scana Hydrocarbons, Inc	05-29-92	G-S	15,000	N	I	05-13-92	Indef.
ST92-4162	Tennessee Gas Pipeline Co	CNG Transmission Corp	05-29-92	G	12,000	N	F	05-08-92	Indef.
ST92-4163	El Paso Natural Gas Co	Enron Gas Marketing, Inc	05-29-92	G-S	198,842	Y	I	03-26-92	Indef.
ST92-4164	Delhi Gas Pipeline Corp	Ozark Gas Transmission System.	05-29-92	C	2,000	N	I	05-01-92	12-31-99
ST92-4165	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	05-29-92	C	4,000	N	I	05-01-92	Indef.
ST92-4166	Delhi Gas Pipeline Corp	Panhandle Eastern Pipeline Co	05-29-92	C	10,000	N	I	05-01-92	Indef.
ST92-4167	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	05-29-92	C	8,000	N	I	05-01-92	12-31-99
ST92-4168	Delhi Gas Pipeline Corp	Ozark Gas Transmission System.	05-29-92	C	8,000	N	I	05-01-92	12-31-99
ST92-4169	Delhi Gas Pipeline Corp	Ozark Gas Transmission System.	05-29-92	C	6,000	N	I	05-01-92	12-31-99
ST92-4170	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	05-29-92	C	6,000	N	I	05-01-92	12-31-99
ST92-4171	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	05-29-92	C	5,000	N	I	05-08-92	01-01-00
ST92-4172	Williston Basin Inter. P/L Co	Prairielands Engery Marketing, Inc.	05-29-92	G-S	120,000	A	I	04-30-92	10-14-92
ST92-4173	Arkla Energy Resources	Twister Transmission Co	05-29-92	G-S	20,000	N	I	04-01-92	Indef.
ST92-4174	Arkla Energy Resources	Highland Energy Co	05-29-92	G-S	20,000	N	I	04-09-92	Indef.
ST92-4175	Arkla Energy Resources	Ohio Gas Co	05-29-92	B	10,000	N	I	04-08-92	Indef.
ST92-4176	Pacific Gas Transmission Co	Oregon Natural Gas Development Corp.	05-29-92	G-S	50,000	N	I	05-08-92	Indef.
ST92-4177	Pacific Gas Transmission Co	Direct Energy Marketing Limited	05-29-92	G-S	60,00	N	I	05-07-92	Indef.
ST92-4178	Williams Natural Gas Co	Kenaska Marketing Ventures	05-29-92	G-S	106,000	N	I	05-01-92	Indef.
ST92-4179	El Paso Natural Gas Co	Williams Natural Gas Co	05-29-92	G	50,000	Y	I	05-01-92	Indef.
ST92-4180	ANR Pipeline Co	North Canadian Marketing Corp	05-29-92	G-S	30,000	N	I	05-02-92	Indef.
ST92-4181	ANR Pipeline Co	Union Light Heat & Power Co	05-29-92	B	2,036	N	F	05-01-92	Indef.
ST92-4182	ANR Pipeline Co	Arco Natural Gas Marketing, Inc.	05-29-92	G-S	2,036	N	F	05-01-92	Indef.
ST92-4183	ANR Pipeline Co	Cincinnati Gas and Electric Co	05-29-92	B	100,000	N	I	05-01-92	Indef.
ST92-4184	ANR Pipeline Co	Peoples Gas Light & Coke, N. Il Gas.	05-29-92	B	50,000	N	I	05-04-92	Indef.
ST92-4185	ANR Pipeline Co	Enron Gas Marketing, Inc	05-29-92	G-S	150,000	N	I	05-01-92	Indef.
ST92-4186	ANR Pipeline Co	Cincinnati Gas & Electric Co	05-29-92	B	8,146	N	F	05-01-92	Indef.
ST92-4187	ANR Pipeline Co	Ward Gas Marketing, Inc	05-29-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4188	ANR Pipeline Co	Nerco Oil & Gas, Inc	05-29-92	G-S	200,000	N	I	05-01-92	Indef.
ST92-4189	ANR Pipeline Co	Northern Illinois Gas Co	05-29-92	B	25,00	N	I	05-01-92	Indef.
ST92-4190	ANR Pipeline Co	Entrade Corp	05-29-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4191	ANR Pipeline Co	Coastal Gas Marketing Co	05-29-92	G-S	100,000	N	I	05-02-92	Indef.
ST92-4192	ANR Pipeline Co	Central Illinois Light Co	05-29-92	B	9,165	N	F	05-01-92	Indef.
ST92-4193	Iroquois Gas Trans. System. L.P.	Continental Energy Marketing Ltd.	05-29-92	G-S	100,000	N	I	05-01-92	10-31-92
ST92-4194	Transcontinental Gas P/L Corp	Industrial Energy Services Co	05-29-92	G-S	20,000	N	I	05-01-92	Indef.
ST92-4195	Transcontinental Gas P/L Corp	Atlanta Gas Light Co	05-29-92	B	700,000	N	I	05-12-92	Indef.
ST92-4196	Transcontinental Gas P/L Corp	Nomeco Oil & Gas Co	05-29-92	G-S	40,000	N	I	05-01-92	Indef.
ST92-4197	Transcontinental Gas P/L Corp	Delmarva Power & Light Co	05-29-92	B	100,000	N	I	05-02-92	Indef.
ST92-4198	Transcontinental Gas P/L Corp	Woodward Marketing, Inc	05-29-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4199	Transcontinental Gas P/L Corp	Consolidated Edison Co. of NY, Inc.	05-29-92	B	100,000	N	I	05-04-92	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing Company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 92-17157 Filed 7-20-92 12:01 pm]

BILLING CODE 6717-01-M

[Docket Nos. JD92-07658T, Texas—61; JD92-07659T, Texas—62; JD92-07660T, Texas—63; JD92-07661T, Texas—64]

Railroad Commission of Texas; NGPA Notices of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notices of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the W Sand (Docket No. JD92-07658T), X Sand (Docket No. JD92-07659T), Y Sand (Docket No. JD92-07660T), and Z Sand (Docket No. JD92-07661T) of the Lower Vicksburg Formation, in portions of Hidalgo County, Texas, qualify as tight formations under § 107(b) of the Natural Gas Policy Act of 1978. The four determinations represent the reduction of the recommended areas applicable to the W, X, Y, and Z Sands under the previously withdrawn notice of determination for the Lower Vicksburg Formation in Texas—15 Addition 4 (Docket No. JD92-02504T).

The notices of determination also contain Texas' findings that the currently recommended portions of the W, X, Y, and Z Sands meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17158 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

[Docket No. JD92-07745T West Virginia-11]

West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1992.

Take notice that on July 13,1992, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) subnmitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Fifty-Foot/Thirty-Foot, Gordon, Fourth and Fifth Sands in certain areas of Harrison and Doddridge Counties, West Virginia qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers approximately 26 square miles in the Folsom, Salem, Wallace and Wolf Summit Quads in Harrison and Doddridge Counties, West Virginia.

The notice of determination also contains West Virginia's findings that the referenced portion of the Fifty-Foot/Thirty-Foot, Gordon, Fourth and Fifth Sands meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 274.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17159 Filed 7-20-92; 12:01 am]

BILLING CODE 6717-01-M

[Docket No. PR92-18-000]

Delhi Gas Pipeline Corp. (Kansas System); Petition for Rate Approval

July 15, 1992.

Take notice that on June 30, 1992, Delhi Gas Pipeline Corporation (Delhi) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 27.74 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Delhi states that it owns and operates extensive non-interconnected pipeline systems primarily in the states of Texas and Oklahoma with smaller operations in several other states, including facilities in Kansas, which are the subject of this proceeding. Delhi further states that its Kansas facilities are located in various counties in Kansas. By Commission letter order issued June 21, 1990 (51 FERC ¶ 61,391 (1990)), Delhi was authorized to charge a maximum rate of $0.26 per MMBtu for the period July 1, 1989, through June 30, 1992, for the Kansas System.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 3, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17160 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

[RS92-35-000]

Gas Transport, Inc; Conference

July 14, 1992.

Take notice that on July 31, 1992, a conference will be convened in the captioned restructuring docket. This conference is being convened to discuss the summary of its Order No. 636 compliance filing and rates filed by Gas Transport, Inc. on July 7, 1992. The conference will be held in room 3400-C of the offices of the Federal Energy Regulatory Commission at 825 N. Capitol Street, Washington, DC 20426. The conference will begin at 9:30 a.m. on July 31, 1992. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17080 Filed 7-20-92; 12:01pm]

BILLING CODE 6717-01-M

[Docket No. CP92-576-000]

Panhandle Eastern Pipe Line Co.; Application

July 15, 1992.

Take notice that on July 2, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-576-000 an application, as supplemented July 9, 1992, pursuant to section 7(b) of the Natural Gas Act for authorization to partially abandon

authorized sales service to two of its existing jurisdictional sales customers, Kokomo Gas and Fuel Company (Kokomo) and Northern Indiana Public Service Company (NIPSCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that in accordance with Article III, section 4.a(iv) of Panhandle's stipulation and agreement dated April 21, 1991, in Docket Nos. RP88–262–000, *et al*, Kokomo and NIPSCO have entered into new service agreements with Panhandle reducing their annual and daily contract demand quantities as detailed in the application and extending the term of service to October 31, 1993. It is indicated that the new service agreements would supersede the customers' existing Rate Schedule G–1 service agreements. No abandonment of facilities is proposed.

Any person desiring to be heard or to make protest with reference to said application should on or before July 27, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17081 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket Nos. ER92–279–000 and ER92–280–000]

Public Service Electric and Gas Co.; Filing

July 15, 1992.

Take notice that on June 2, 1992 Public Service Electric and Gas Company (PSE&G) tendered for filing an amendment in the above referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17083 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket No. RP92–134–000]

Southern Natural Gas Co.; Informal Settlement Conference

July 15, 1992.

Taken notice that an information settlement conference will be convened in this proceeding on Wednesday, July 29, 1992, at 11 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy R. Carr at (202) 208–1240 or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17161 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket No. RP86–119–021]

Tennessee Gas Pipeline Co.; Tariff Filing to Implement Stipulation and Agreement

July 15, 1992.

Take notice that on July 13, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following revised sheets to its Fourth Revised Vol. I of its FERC Gas Tariff, with a proposed effective date of July 1, 1992.

Substitute Original Sheet No. 21
Substitute Original Sheet No. 21A
Substitute Original Sheet No. 22
Substitute Original Sheet No. 23
Substitute Original Sheet No. 344

Tennessee states that the purpose of this filing is to state the effective TGIC gas rate for the month of July and to correct certain errors in its compliance filing of June 30 in Docket Nos. RP 86–119 *et al.*

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17162 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket No. RP91–203–014]

Tennessee Gas Pipeline Co.; Compliance Filing

July 15, 1992.

Take notice that on July 10, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff

sheets to its FERC Gas Tariff to be effective February 1, 1992, and April 1, 1992, respectively:

Original Volume No. 2

5th Substitute 25th Revised Sheet No. 5
5th Substitute Original Sheet No. 5
2nd Substitute 26th Revised Sheet No. 5
2nd Substitute 1st Revised Sheet No. 5A

Tennessee states that the purpose of this filing is to comply with the Commission's June 25, 1992 Order, which required Tennessee to file revised rate schedule T–47 reflecting the zone methodology used in its original filing on August 1, 1991 in the above referenced docket.

Tennessee states that copies of the filing have been mailed to all parties on the official service list in this proceeding, affected customers, and affected state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17163 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket Nos. RP88–228–035]

Tennessee Gas Pipeline Co.; Tariff Filing

July 15, 1992.

Take notice that on June 30, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheet to be effective July 1, 1992:

Fourth Revised Volume No. 1

Original Volume No. 2

28th Revised Sheet No. 5
3rd Revised Sheet No. 5A
26th Revised Sheet No. 6
2nd Revised Sheet No. 6A
10th Revised Sheet No. 7
2nd Revised Sheet No. 7A
11th Revised Sheet No. 8
2nd Revised Sheet No. 8A
10th Revised Sheet No. 9
2nd Revised Sheet No. 9A
14th Revised Sheet No. 10
1st Revised Sheet No. 10A

Tennessee states that the purpose of this filing is to implement the Stipulation and Agreement (Cosmic Settlement) filed on June 25, 1991 and amended on May 7, 1991 by Tennessee in the referenced docket as approved and modified by the Commission order on June 25, 1992. The tariff revisions also reflect the modifications adopted or required by the Commission orders of January 20 and April 10 in the referenced consolidated proceedings.

Tennessee states that it will make a separate filing to establish separate take-or-pay recovery provisions for Equitable Gas Company and Central Hudson Gas and Electric Company.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17164 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket No. RP91–210–011]

Tennessee Gas Pipeline Co.; Filing

July 15, 1992.

Take notice on July 13, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1992:

First Revised Sheet No. 267
First Revised Sheet No. 274
First Revised Sheet No. 275
Original Sheet No. 275A
First Revised Sheet No. 499
First Revised Sheet No. 507

Tennessee states that this filing is being made to comply with the Commission's order dated June 26, 1992. Tennessee states that the tariff sheets have been amended to incorporate the ten commitments made by Tennessee in its June 12th filing in this proceeding to provide additional information to parties pursuant to its cash-out mechanism.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17165 Filed 7–20–92; 12:01 pm]

BILLING CODE 6717–01–M

[Docket No. CP92–588–000]

Transcontinental Gas Pipe Line Corp.; Application

July 14, 1992.

Take notice that on July 9, 1992, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–588–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service provided to United Gas Pipe Line Company (United), all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon a firm transportation service for United under TGPL's Rate Schedule X–241 on the basis that the service is no longer need.[1] TGPL states that the service is being rendered pursuant to a transportation agreement dated June 23, 1980, as amended on November 17, 1980, and March 7, 1981. TGPL indicates that the natural gas is transported from Ship Shoal Blocks 70 and 72, offshore Louisiana, to points of delivery located onshore Louisiana. TGPL states that although the original agreement specified a contract demand of 13,300

[1] TGPL states that authorization for the transportation services was issued in Docket No. CP81–93–000 on February 8, 1982, as amended by orders issued on October 25, 1982, and May 20, 1983. See 18 FERC ¶ 61,097 (1982), 21 FERC ¶ 62,091 (1982), and 23 FERC ¶ 61,266 (1983).

Mcf per day, such contract demand subsequently has been reduced in accordance with the settlement agreement dated December 20, 1984. TGPL states that the primary term of the agreement will expire on November 23, 1992. TGPL requests an effective date for the proposed abandonment of November 23, 1992, since the parties have entered an agreement dated October 25, 1991, terminating the service in its entirety, effective on November 23, 1992.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20626, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17079 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

[Docket No. SA92-6-000]

TransTexas Pipeline; Petition for Rate Adjustment

July 15, 1992.

Take notice that on June 29, 1992, TransTexas Pipeline (TransTexas) tendered for filing a petition for an adjustment under 18 CFR 385.1104 wherein TransTexas seeks an adjustment to 18 CFR 284.123(b)(1) to allow the continued use of current intrastate transportation rates as the applicable rates for transportation under section 311 of the NGPA. Such rates were determined on June 1, 1992 by the Texas Railroad Commission to be just and reasonable and not in excess of a cost-based rate.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure (18 CFR 395.1101, *et seq.*).

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provions of such subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92-17166 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

[Docket No. CP92-596-000]

Trunkline Gas Co.; Request for Abandonment Authorization

July 15, 1992.

Take notice that on July 15, 1992, Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipeline Company (Panhandle) filed settlements in Docket No. RP87-15-033 *et al.*, and Docket No. RP91-229-009, *et al.*, in which they, among other things, request the Commission, pursuant to section 7(b) of the Natural Gas Act, to authorize Trunkline to abandon the sales service it currently provides to Panhandle under Trunkline's Rate schedule P-1, pursuant to a sales agreement dated September 1, 1989, as of May 1, 1992, without further condition or qualification. The Commission is attaching the above captioned certificate docket to this request.

Any person desiring to be heard or to protest said request for abandonment authorization should on or before July 22, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear of be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17167 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4156-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information collection request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities (ICR no. 1459.02). this ICR requests an extension of a currently approved collection.

Abstract: With ICR 1459.02, EPA is requesting a seven-month extension of OMB clearance of the Census of Pulp, Paper, and Paperboard Manufacturers under the Paperwork Reduction Act. As the current OMB clearance will expire on August 31, 1992, EPA is requesting OMB approval to continue information until March 31, 1993. Clearance for this additional period will enable EPA to complete the Census and to conduct certain follow-up activities.

To implement the Clean Water Act, EPA must issue effluent limitations guidelines, pretreatment standards, and new source performance standards for point sources of pollution from a number of industries, including manufactures of pulp, paper, and paperboard. The effluent guidelines and standards currently in place are considered outdated, so EPA intends to revise them in association with a consent decree entered into with the Environmental Defense Fund in 1988.

The 1990 National Census of Pulp, Paper and Paperboard Manufacturing Facilities was designed to provide EPA with the information it needs to classify and categorize the industry, to choose the best treatment and discharge technology, to determine alternative manufacturing processes which could reduce pollution, and to study the engineering changes necessary for compliance with the best technology.

EPA has also collected financial and economic information as part of the Census in order to assess the economic impact of compliance on the facilities.

Additionally, EPA has collected information on air emissions from industry wastewater in order to help support the development of Clean Air Act guidelines and standards. Finally, the Agency has collected sludge production and disposal information to determine the appropriate regulatory action under the Resource conservation and Recovery Act.

The follow-up activities which EPA plans to conduct during the requested seven-month clearance extension will consist primarily of two types of actions. First, EPA will contact respondents to verify incomplete or unclear information which the respondents have already submitted. Second, EPA will ask a subset of respondents for additional information on pollution prevention practices which were initiated in 1990 or 1991. EPA may also conduct site visits of some of these facilities.

Burden Statement: The average burden associated with the 1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities for the requested clearance period is 8 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Pulp, paper, and paperboard manufacturing facilities.

Estimated No. of Respondents: 25.

Estimated Total Annual Burden on Respondents: 200 hours.

Frequency of Collection: Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 92–17134 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

[FRL–4156–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICF, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Amendment to NPDES Compliance Assessment Information Requirements (ICR 1427.03). This ICR is an amendment to a currently approved collection.

Abstract: With ICR 1427.03, EPA is amending the baseline National Pollutant Discharge Elimination System (NPDES) Compliance Assessment ICR to incorporate the compliance assessment requirements of the State Sludge Management Program.

The baseline NPDES Compliance Assessment ICR (ICR no. 1427.02, OMB no. 2040–0110, approved on 06/12/90) concerns all facilities discharging pollutants into waters of the United States. Under section 402 of the Clean Water Act (CWA), these facilities must have a permit issued by EPA or an approved State under the NPDES program. The baseline NPDES Compliance Assessment ICR in particular addresses the requirements designed to provide the permitting authority with sufficient data to determine that the facility is in compliance with permit conditions. The compliance assessment ICR covers reporting and recordkeeping of monitoring data, compliance schedule reports, noncompliance reports, alternate level reports, which address changes in a facility's production level, and 308 letters, which deal with the control of oil and hazardous waste spills. These requirements are distinct from those of the Discharge Monitoring Report (ICR no. 0229.06, OMB no. 2040–0004), which elicits sampling and analysis data for individual permits in a standardized form.

Under section 405 of the Water Quality Act of 1987, EPA has established a similar permitting program for the disposal of sewage sludge. Permit conditions concerning sludge use have been included in some NPDES permits, while some sludge-only permits have been developed separately. The information requirements associated with the sewage sludge program have until now been included in the State Sludge Management Program ICR (ICR no. 1237.03, OMB no. 2040–0128, approved 04/19/89) which will expire shortly. Now EPA is using ICR 1427.03 to incorporate these requirements into the NPDES baseline.

The requirements described in this ICR amendment fall upon publicly-owned treatment works (POTWs) or other treatment works treating domestic sewage. These respondents must submit reports of compliance or noncompliance with permit compliance schedules and sludge regulations. In these reports, the respondents must indicate whether the milestones set out in their permits have been achieved and must describe any

instance of noncompliance with sludge regulations that has not been reported elsewhere.

EPA Regional offices and approved States will use the information submitted in order to monitor compliance with national standards, to assess the adequacy of these standards, to establish appropriate permit conditions, and to determine enforcement needs. EPA headquarters uses the information for large-scale program management.

Burden Statement: The average annual reporting burden associated with the amendment to the ICR for NPDES Compliance Assessment Requirements is 3.5 hours per response. This total includes time for searching existing data sources, gathering the data needed, maintaining required records, and completing and reviewing the collection of information. The average annual recordkeeping burden is 1.7 hours per record keeper.

Respondents: Facilities discharging wastewater.

Estimated No. of Respondents: 16,759.

Estimated Total Annual Burden on Respondents: 195,368 hours.

Frequency of Collection: Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 92–17135 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

[FRL–4156–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System Modification and Variance Requests (ICR no. 0029.05). This ICR requests an extension of the expiration date of a currently approved collection without any change in the substance or the method of collection.

Abstract: ICR 0029.05 seeks renewal of OMB clearance for the requirements of the National Pollutant Discharge Elimination System (NPDES) concerning requests for permit modifications and variances. Authorized by the Clean Water Act (CWA), the NPDES establishes a program of permits for facilities wishing to discharge wastes into lakes and streams. These permits are administered by EPA and States, who set conditions for the permits in order to attain the goals of the CWA. Within the NPDES permitting framework, the Sewage Sludge program deals with treatment works that handle domestic sewage.

Under section 301 of the CWA, EPA and States have the authority to modify NPDES permit conditions. Under Section 405 of the Act, authorized States may issue or modify permits addressing the use and disposal of sewage sludge.

Normally, the permit conditions set by the permit authority remain unchanged throughout the five-year life of each permit. However, in some cases, a permittee may apply for a variance or modification in the conditions to account for some change which has taken place. Examples of such changes are revisions in State water quality standards and alterations in the permittee's operations.

By granting permit modifications and variances, EPA and the States are able to quickly take into account innovations in pollution control technology, legislative initiatives, changes in permittees' operations, and corrections to previously-submitted permit information.

ICR 0029.05 addresses the information requirements associated with these permit modifications and variances. It encompasses information requirements described in two previously-approved ICRs: Modification/Variance Requests to Permits for Wastewater Discharge and Associated Regulations (OMB no. 2040–0068, ICR no. 0029.04) and the State Sludge Management Program (OMB no. 2040–0128, ICR no. 1237.03).

To apply for a permit modification or variance, permittees must supply information to update or supplement the data they submitted with their original permit application. This information serves to allow the permitting authority to ascertain whether a permit modification is needed and whether a request for a variance from permit conditions should be granted. Typical information submissions might include a Permittee Report of Planned Facility Changes, where a permittee describes any planned facility alterations or additions which may affect the level or nature of discharged pollutants. Another frequently-submitted document might be the Permittee Report of Inaccurate Previous Information, where permittees notify the permit authority by letter of any inaccurate or incomplete information in a previously-submitted permit application or report.

Burden Statement: The average burden associated with NPDES Modification and Variance Requests is 4.25 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Facilities with NPDES permits.

Estimated No. of Respondents: 12,442.

Estimated Total Annual Burden on Respondents: 52,918 hours.

Frequency of Collection: Variable, based on respondent's request.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 92–17141 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

[FRL-41563-3]

California State Motor Vehicle Pollution Control Standards; Opportunity for Written Comments on Additional Information Submitted to the Public Docket of the Low-Emission Vehicle Standards Waiver Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity to submit written comments.

SUMMARY: On January 9, 1992, EPA published a notice that the California Air Resources Board (CARB) had requested a waiver of Federal preemption for its Low-Emission Vehicle (LEV) standards. In this Notice, EPA offered an opportunity for a public hearing and asked for public comment on this waiver request. This hearing was held on February 19, 1992, and the public comment period was closed on March 24, 1992. By this notice, EPA announces an opportunity for written comment on additional information submitted to the public docket of this waiver request (Docket A-91-71) subsequent to the close of the public comment period.

DATES: Written comments on this additional information will be accepted until August 20, 1992.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Charles N. Freed, Director, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the additional information submitted to Docket A-91-71 will be available for public inspection during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone (202) 260-7548). A reasonable fee will be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone (202) 233-9258.

SUPPLEMENTARY INFORMATION: By letter dated October 4, 1991, CARB requested a waiver of Federal preemption for its LEV standards and accompanying test procedures. On January 9, 1992, EPA published a Notice of Opportunity for Public Hearing and request for comments regarding this waiver request.[1] EPA received request from two parties to hold this hearing, which was held on February 19, 1992. The public comment period closed on March 24, 1992.

EPA has recently received additional comments from the Motor Vehicle Manufacturers Association (MVMA), which had filed comments previously in this proceeding. These comments include information discussing specific descriptions of automobile technology needed to produce vehicles which would comply with the LEV standards, projections of the cost of compliance, and other product planning information. To allow interested parties an opportunity to review and comment upon this new submission from MVMA, EPA is accepting public comment on this new submission until August 20, 1992. EPA asks that interested parties limit their comments to discussion of this new information as it relates to the issues EPA must examine when evaluating a CARB waiver request. These issues are:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions;

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.[2]

Persons with comments containing CBI must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." If a person making comments wants EPA to base its waiver decision in part on a submission labeled as CBI, then a non-confidential version of the document which summarizes the key data or information should be submitted for the public docket. Information covered by a claim or confidentiality will be disclosed by EPA only to the extent allowed by the procedures in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person who submitted the comments.

[1] 57 FR 909.

[2] See section 209(b) of the Clean Air Act, 42 U.S.C. 7543(b).

Dated: July 14, 1992.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-17014 Filed 7-20-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-949-DR]

Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-949-DR), dated July 2, 1992, and related determinations.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Gregory S. Jones, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3668.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, dated July 2, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1992:

Moore County for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-17112 Filed 7-20-92; 12:01 pm]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Georgia Ports Authority et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice

appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200416–005.

Title: Georgia Ports Authority/ Jugolinija Terminal Agreement.

Parties: The Georgia Ports Authority, Jugolinija.

Synopsis: The Agreement changes the name of Jugolinija to Croatia Line and extends the term of the Agreement for three years beginning October 1, 1992.

Agreement No.: 224–200688.

Title: Maryland Port Administration/ Sea-Land Terminal Agreement.

Parties: Maryland Port Administration ("MPA"), Sea-Land Service, Inc. ("Sea-Land").

Synopsis: The Agreement provides that MPA will lease approximately eleven acres at the Port of Baltimore's Seagirt Terminal on a month-to-month basis for a maximum period of six months.

Agreement No.: 224–200689.

Title: Total Terminals Inc. ("TTI") Agreement.

Parties: Hanjin Transportation Co., Ltd. ("HJT"), Marine Terminals Corporation ("MTC").

Synopsis: The proposed Agreement would permit HJT and MTC, as shareholders, to establish TTI, which will provide marine terminal and stevedoring services at HJT's facilities at the Port of Long Beach.

Dated: July 15, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17088 Filed 7–20–92; 12:01 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Brenton Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Brenton Banks, Inc., Des Moines, Iowa; to acquire Ames Savings Bank, F.S.B., Ames, Iowa, and thereby engage in owning, controlling, and operating a savings association, if the savings association engages only in deposit taking, lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Board of Governors of the Federal Reserve System, July 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17092 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

Continental Mortgage Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Continental Mortgage Corporation, Maywood, Illinois; to engage *de novo* through its subsidiary, Continental Mortgage Banking Corporation, Maywood, Illinois, in originating, processing and funding 1-4 family residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1992..

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17093 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

Merchants and Planters Bank Employee Stock Ownership Plan; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Merchants and Planters Bank Employee Stock Ownership Plan, Newport, Arkansas; to acquire 15.89 percent of the voting shares of M&P Community Bancshares, Inc., Newport, Arkansas, and thereby indirectly acquire Merchants and Planters Bank, Newport, Arkansas.

Board of Governors of the Federal Reserve System, July 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17094 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

Merrill Merchants Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 14, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Merrill Merchants Bancshares, Inc., Bangor, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Merrill Merchants Bank, Bangor, Maine, a *de novo* bank.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Texas Corporation, Columbus, Ohio; to merge with Team Bancshares, Inc., Dallas, Texas, and Team Bancshares II, Inc., Wilmington, Delaware, and thereby indirectly acquire Team Bank, Fort Worth, Texas.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Decatur Investment, Inc., Oberlin, Kansas; to acquire 99.5 percent of the voting shares of State Bank of Atwood, Atwood, Kansas.

2. F.S.B., Inc., Superior, Nebraska; to acquire 94.5 percent of the voting shares of First Formoso, Inc., Superior, Kansas, and thereby indirectly acquire Jewell County Bank, Mankato, Kansas.

3. LoLyn Financial Corporation, Lee's Summit, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Community Bank of Raymore, Raymore, Missouri.

4. United Missouri Bancshares, Inc., Kansas City, Missouri, and United Subsidiary, Inc., Kansas City, Missouri, a wholly-owned subsidiary of United Missouri; to acquire 100 percent of the voting shares of M-L Bancshares, Inc., Wichita, Kansas, and thereby indirectly acquire Security State Bank of Great Bend, Great Bend, Kansas, and Russell State Bank, Russell, Kansas; Highland Bancshares, Inc., Topeka, Kansas, and thereby indirectly acquire Highland Park Bank and Trust, Topeka, Kansas; North Plaza Bancshares, Inc., Topeka, Kansas, and thereby indirectly acquire North Plaza Bank State Bank, Topeka, Kansas; Bellcorp, Inc., Manhattan, Kansas, and thereby indirectly acquire Citizens Bank and Trust Co., Manhattan, Kansas; NBA Bankshares, Inc., Salina, Kansas, and thereby indirectly acquire The National Bank of America at Salina, Salina, Kansas. In connection with this acquisition, United Subsidiary, Inc. has also applied to become a bank holding company.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Western Washington Bancorp, Federal Way, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Washington State Bank, Federal Way, Washington, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17095 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062292 AND 070292

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Chemical Banking Corporation, NSI Health Care Services Corp., Home X-Ray Holding Corp.	92-1072	06/22/92
Rand McNally & Company, Golder, Thoma, Cressy Fund III Limited Partnership, Nicholstone Holdings, Inc.	92-1113	06/22/92
UAL Corporation, Carl C. Icahn, Trans World Airlines, Inc.	92-1114	06/22/92
Danka Business System PLC, Fujitsu Limited, Fujitsu Imaging System of America, Inc.	92-1111	06/23/92
Chevron Corporation, Exxon Corporation, Exxon Corporation	92-1092	06/24/92
The F. Dohmen Co., Northwestern Drug Company, Northwestern Drug Company	92-1117	06/24/92
Jostens, Inc., Wicat Systems, Inc., Wicat Systems, Inc.	92-0851	06/25/92
Aon Corporation, Wexford Underwriting Managers, Inc., Wexford Underwriting Managers, Inc.	92-1042	06/25/92
The Molson Companies Limited, The Dexter Corporation, The Mogul Corporation	92-1056	06/25/92
Medeva PLC, International Medication Systems, Limited, International Medication Systems, Limited	92-1061	06/25/92
Rochester Telephone Corporation, The Statesboro Telephone Company, The Statesboro Telephone Company	92-1104	06/25/92
JWP Inc., Resource Recyling Technologies, Inc., Resource Recyling Technologies, Inc.	92-1107	06/25/92
NFC plc, Trammell Crow Distribution Corporation, Trammell Crow Distribution Corporation	92-1108	06/25/92
JWP Inc., Graver Tank & Mfg. Co., Inc., Graver Tank & Mfg. Co., Inc.	92-1116	06/25/92
Boston Ventures Limited Partnership III, Continental Cablevision, Inc., Continental Cablevision, Inc.	92-1122	06/25/92
John B. Sanfilippo & Son, Inc., John C. Taylor, Sunshine Nut Company, Inc.	92-1012	06/26/92
Karl Eller, Gannett Co., Inc., Gannett Outdoor Co. of Arizona	92-1045	06/26/92
Grand Metropolitan Public Limited Company, AADC Holding Company, Inc., AADC Holding Company, Inc.	92-1089	06/26/92
Centre Capital Investors, L.P., Glomesh Pte. Ltd., Victory Markets, Inc.	92-1121	06/26/92
Airgas, Inc., Virginia Welding Supply Co., Virginia Welding Supply Co.	92-1130	06/26/92
Bell Atlantic Corporation, Lynda B. Lovett, Cellcom of Hickory, Inc.	92-1137	06/26/92
Biomet, Inc., Walter Lorenz, Walter Lorenz Surgical Instruments, Inc.	92-1132	06/29/92
Kobe Steel Ltd., Mitsubishi Corporation, Machinery Distribution Inc.	92-1136	06/29/92
Royal Dutch Petroleum Company, The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company	92-1139	06/29/92
Sensormatic Electronics Corporation, Dr. Erich Burlefinger, Burle Industries, Inc.	92-1058	06/30/92
Dr. Erich Burlefinger, Sensormatic Electronics Corporation, Sensormatic Electronics Corporation	92-1059	06/30/92
Beverly Enterprises, Inc., Thomas Konig, Culwell Health, Inc.	92-1063	06/30/92
Metropolitan Life Insurance Company, Sequa Corporation, Sequa Capital Corporation	92-1096	06/30/92
Tyco Toys, Inc., David C.W. Yeh, Universal Matchbox Group Ltd.	92-1074	07/01/92
David C. W. Yeh, Tyco Toys, Inc., Tyco Toys, Inc.	92-1075	07/01/92
Minnesota Mining & Manufacturing Company, Stephen G. Dent, Fibre Glass-Evercoat Company, Inc.	92-1085	07/01/92
Fuji Photo Film Co., Ltd., Robert Rachesky, Union Photo Company, Inc.	92-1100	07/01/92
H. J. Heinz Company, Cooperfund, Inc., Cooperfund, Inc.	92-1120	07/01/92
Kellwood Company, Mr. Leo Yu Ming Chu and Mrs. Ivy Oi Wa Mui Chu, California Ivy, Inc.	92-1129	07/01/92
Lincoln National Corporation, The Seibels Bruce Group, Inc., The Seibels Bruce Group, Inc.	92-1138	07/01/92
JWP Inc., Henry C. Meagher, Mechanical Construction Corp.	92-1148	07/01/92
JWP Inc., Raymond E. Meagher Jr., Mechanical Construction Corp.	92-1155	07/01/92
James H. Possehl, Minorco, Inspiration Leasing Inc.	92-1151	07/02/92
Randolph W. Lenz, Clark Equipment Company, Clark Equipment GmbH	92-1153	07/02/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 92-17126 Filed 7-20-92; 12:01 pm]

BILLING CODE 6750-01-M

[Docket 9240]

American Family Publishers; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey-based seller of magazine subscriptions from misrepresenting that an attorney is actively and substantially involved in the collection of any debt, and that legal action with respect to any alleged debt is about to be, or will be, initiated. Respondent also would be prohibited from failing to instruct any debt collector it retains, engages or employs to comply fully with all the provisions of the Fair Debt Collection Practices Act.

DATES: Comments must be received on or before September 18, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine or Roger Fitzpatrick, FTC/S-4429, Washington, DC 20580. (202) 326-3224 or 326-3172.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by and between American Family Publishers, a joint venture partnerships of the Time Incorporated Magazine Company and AFP Associates, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent American Family Publishers is a joint venture partnership organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at

Four Gateway Center, Newark, New Jersey 07102.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as the Commission may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission, or that the facts alleged in the compliant other than jurisdictional facts are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that respondent American Family Publishers, a joint venture partnership of The Time Incorporated Magazine Company and AFP Associates, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, agent, independent contractor, or other device, in connection with the collection or attempted collection of any debt in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, that:

(1) An attorney is actively and substantially involved in the collection of any debt;

(2) Legal action with respect to any alleged debt is about to, or will, be initiated.

B. Failing to instruct any debt collector it retains engages, or employs to comply fully with all provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*, as amended or as it may hereafter be amended.

II

It Is Further Ordered That respondent shall distribute a copy of this Order to each of its present and future officers, agents, representatives, and employees having responsibility with respect to the collection of debts and to each of the present and future debt collectors that respondent retains, engages or employs and shall secure from each such person or entity a signed statement acknowledging receipt of said Order.

II

It Is Further Ordered That:

A. For purposes of this Order, the following definitions shall apply:

(1) "Consumer Accounts" shall mean a debt owed to respondent by a direct mail purchaser of magazines or other goods or products;

(2) "Debt Collector" shall mean an independent third party engaged in the collection of debts on behalf of itself or others.

B. Respondent is enjoined from:

(1) Encouraging, including, advising or coercing any debt collector to which it sells, transfers, or assigns title to consumer accounts to engage in acts or practices that are prohibited by Section I(A) of this Order with respect to such consumer accounts, provided that mere negotiation of the price of sale without referring to or suggesting practices prohibited by section I(A) of this Order shall not be deemed to be encouraging, inducing, advising or coercing;

(2) Failing to take reasonable steps sufficient to determine whether any debt collector to which it sells, transfers, or assigns title to consumer accounts engages in collection activities prohibited by section I(A) of this Order with respect to such consumer accounts. Respondent shall have satisfied its duty to determine which practices are employed by a debt collector if it instructs and contractually requires such debt collector to provide regularly to respondent collection letters used by such debt collector, and investigates all consumer complaints received by respondent (including those received from third parties such as government agencies and better business bureaus) that state or imply a violation of Section I(A) of this Order by debt collectors.

(3) Selling, transferring or assigning title, or continuing to sell, transfer or assign title to consumer accounts to any debt collector when it has actual knowledge or knowledge fairly implied that such debt collector is engaged in acts or practices prohibited by section I(A) of this Order, unless respondent has a *bona fide* belief that such debt collector is immediately ceasing to engage in such prohibited acts or practices.

(4) Failing to notify the Associate Director of Enforcement that it has terminated the sale, transfer or assignment of title to consumer accounts to a debt collector pursuant to the requirements of subsection (3) above.

(5) Failing to maintain, for a period of five (5) years from the date of entry of this Order, records sufficient to demonstrate compliance with the Order.

IV

It Is Further Ordered That, notwithstanding anything herein to the country:

A. Respondent shall have a complete defense to any charge that it has violated section I(A) of this Order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to a debt collector in a *bona fide*, arm's-length irrevocable sale; and

B. A debt collector shall not be deemed retained, engaged or employed for purposes of determining compliance with Section I(B) of this Order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to such debt collector in a *bona fide*, arm's length irrevocable sale.

V

It Is Further Ordered That for a period of five (5) years from the entry of this Order, respondent shall promptly notify the Federal Trade Commission at least thirty (30) days prior to any proposed change, such as relocation, dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this Order.

It Is Further Ordered That respondent shall, within sixty (60) days of the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement containing consent order to cease and desist from respondent American Family Publishers.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint (issued April 23, 1990) alleges that respondent engaged various debt collection agencies to collect its unpaid accounts and used these debt collection agencies to send deceptive attorney collection letters to consumers. Through these letters, AFP's collectors misrepresented that an attorney is actively and substantially involved in the collection of the debt and that legal action is about to or will be initiated if payment is not made.

The complaint alleges that respondent engaged in unfair and deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act because it knowingly approved the misrepresentations made by its debt collectors or acted in concert with or knowingly assisted its collection agencies in making such misrepresentations.

The proposed order prohibits respondent from misrepresenting directly or by implication, that (1) an attorney is actively and substantially involved in the collection of any debt, and (2) legal action with respect to any alleged debt is about to, or will, be initiated. Respondent is also prohibited from failing to instruct any debt collector it retains, engages, or employs to comply fully with all the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* Respondent is required to distribute a copy of the order to present and future officers, employees, and its outside debt collectors.

Additionally, part III of the proposed order requires that if respondent sells or transfers its accounts to debt collectors in any fashion, respondent (1) may not encourage the debt collector to engage in practices prohibited by the order, (2) must take steps to determine whether the debt collector engages in collection activities prohibited by the order, (3) may not sell account to a debt collector when it has knowledge that such collector is engaged in acts prohibited by the order and, (4) must notify the Commission when it terminates a sales to a debt collector because it had knowledge that the debt collector engaged in practices prohibited by this order. The requirements of part III of the proposed order are considered by the Commission to be appropriate relief in this case to prevent recurrence of the alleged statutory violations.

The order further provides that respondent shall have a complete defense to any charge that it violated provision I(A) of the order if, at the time the violations occurred, title to the accounts had been transferred to a collector in a *bona fide*, arm's-length, irrevocable sale.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 92-17125 Filed 7-20-92; 12:01 pm]

BILLING CODE 6750-01-M

[File No. 912 3165]

Nikki Fashions, Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based retailer of designer clothing and its owner from selling misbranded textile fiber and wool products, and from selling wearing apparel from which they have removed the required care label.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kristie Woods, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA. 02222-1073. (617) 565-7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Nikki Fashions Ltd., a corporation, and Nicolina P. Varrichione, individually and as an officer of Nikki Fashions Ltd.

[FILE NO. 912 3165]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nikki Fashions Ltd., a corporation, and Nicolina P. Varrichione, individually and as an officer of said corporation, ("proposed respondents") and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It Is Hereby Agreed by and between Nikki Fashions Ltd., by its duly authorized officer and Nicolina P. Varrichione, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nikki Fashions Ltd., is a corporation organized, existing, and doing business under the laws of Commonwealth of Massachusetts. Its office and principal place of business is located at 328 Worcester Road, Framingham, Massachusetts 01701.

2. Proposed respondent Nicolina P. Varrichione, is sole shareholder and president of the corporate proposed respondent named herein. She formulates, directs and controls the acts or practices of proposed respondent Nikki Fashions Ltd. Her office and principal place of business are the same as that of said corporate proposed respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such from as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that they have violated the law as alleged in the draft complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any textile fiber product as "textile fiber product" is defined in the Textile Fiber Products Identification Act, as amended (hereinafter "TFPI Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the TFPI Act, textile fiber products that are misbranded in that they do not have securely affixed to, or placed on, each such product in the location, manner, and form required by the TFPI Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by section 4(b) of the TFPI Act.

II

It Is Further Ordered that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any wool product as "wool product" is defined in the Wool Products Labeling Act of 1939, as amended (herein "Wool Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the Wool Act, wool products that are misbranded in that they do not have affixed to, or placed on, each such product in the location, manner, and form required by the Wool Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by section 4(a)(2) of the Wool Act.

III

It Is Ordered that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale

and sale of any textile fiber product, as "textile fiber product" is defined in the TFPI Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the TFPI Act to be affixed to textile fiber products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to section 4(b) of the TFPI Act.

IV

It Is Further Ordered that respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale and sale of any wool product, as "wool product" is defined in the Wool Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the Wool Act to be affixed to wool products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to section 4(a)(2) of the Wool Act.

V

It Is Further Ordered that respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale and sale of any textile wearing apparel, as "textile wearing apparel" is defined in the Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel (hereinafter "Care Labeling Rule"), 16 CFR part 423, do forthwith cease and desist from removing, or causing or participating in the removal of any label or tag required by the Care Labeling Rule to be affixed to textile wearing apparel, unless respondents reattach such label or tag to the article of wearing apparel, prior to the time any such product is sold and delivered to the ultimate consumer.

VI

It Is Further Ordered that respondents shall distribute a copy of this Order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that respondents secure from each such person a signed statement acknowledging receipt of said Order.

VII

It Is Further Ordered that, whenever a stamp, tag, label or other form of identification which shows information required by the TFPI Act or Wool Act is substituted or otherwise removed, respondents shall keep records for a period of five (5) years sufficient to show the information set forth on the removed stamp, tag, label, or other form of identification, as well as the name or names of the person or persons from whom such product was received.

VIII

It Is Further Ordered that respondent shall, for a period of five (5) years after this Order becomes final, maintain and upon request, make available to the Federal Trade Commission for inspection and copying, all documents that relate to the manner and form in which respondents have complied with this Order.

IX

It Is Further Ordered that the corporate respondent shall, for a period of ten (10) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Nikki Fashions Ltd., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

X

It Is Further Ordered that the individual respondent shall, for a period of ten (10) years from the date of this Order, promptly notify the Commission of the discontinuance of her present business or employment and of each affiliation with a new business or employment whose activities include the sale or offer for sale of any type of "textile fiber product," "wool product" or "textile wearing apparel," as those terms are defined in the TFPI Act, the Wool Act and the Care Labeling Rule, respectively, or of her affiliation with a new business or employment in which her own duties and responsibilities involve the sale or offer for sale of any such product. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

XI

It Is Further Ordered that respondents shall, within sixty (60) days after the date of service of this Order, submit a report, in writing, to the Federal Trade Commission setting for in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nikki Fashions Ltd., a Massachusetts corporation, and Nicolina P. Varrichione, individually (collectively, the "proposed respondents").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the alleged sale by proposed respondents of misbranded textile fiber products and misbranded wool products. Proposed respondents are also alleged to have removed care labels from certain articles of textile wearing apparel sold by them. The Commission's proposed complaint alleges that proposed respondents have mutilated or removed, from textile fiber products and wool products, tags, labels or other means of identifying the constituent fibers and percentages of such products and/or the country where such products were processed or manufactured. The proposed complaint also alleges that this conduct by proposed respondents violates the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the regulations promulgated thereunder, *see* 16 CFR Part 303, as well as the Wool Act, 15 U.S.C. 68 *et seq.*, and the regulations promulgated thereunder, *see* 16 CFR part 300.

The Textile Fiber Products Identification Act and the Wool Act make it an unfair and deceptive act or

practice to offer for sale a misbranded textile fiber product or wool product. *See* 15 U.S.C. 70a and 68a. Textile fiber products and wool products are misbranded if they are not labeled as to the constituent fiber content, the percentages of fiber content or the name of the country where these products were processed or manufactured. *See* 15 U.S.C. 70b and 68b.

The Commission's proposed complaint further alleges that proposed respondents have sold wearing apparel to consumers after removing the care labels from these articles of clothing. The Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel, *see* CFR part 423, requires manufacturers and importers to affix labels to articles of textile wearing apparel in order to provide regular care instructions to purchasers. The proposed complaint alleges that proposed respondents' removal of these care labels is an unfair and deceptive act or practice, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because consumers are misled into using improper care procedures that are harmful to the articles of wearing apparel.

The proposed consent order is drafted to ensure proposed respondents' compliance with the relevant statutes and regulations by enjoining future violations. The proposed order prohibits proposed respondents from selling misbranded textile fiber products and wool products and from selling wearing apparel from which proposed respondents have removed the required care label. The proposed order also contains standard order provisions requiring proposed respondents to: Retain records demonstrating their compliance with the order; distribute the order to certain present and future employees; notify the Commission of any changes in the structure of the corporate respondent or in the business or employment of the individual respondent; and to report to the Commission their compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order to modify in anyway its terms.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 92-17124 Filed 7-20-92; 12:01 pm]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Research and Development Agreement; CRADA 92-03

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Environmental Health and Injury Control, Division of Environmental Health Laboratory Sciences, desires to enter into a Cooperative Research and Development Agreement (CRADA) with manufacturers of in vitro diagnostic products and/or instrumentation to develop and/or improve methodology for a reference method for the measurement of low density lipoprotein (LDL) cholesterol. The collaborator and CDC will jointly perform research aimed at the development or improvement of a method to achieve the specificity, precision, accuracy, and transferability required of a national reference method. The CDC will provide technical expertise, consultation and guidance, reference sera, analytical support, and method evaluation and testing.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and with an option for an exclusive royalty-bearing license to the collaborator with which the CRADA is made. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, the CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

SUPPLEMENTARY INFORMATION: This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

Technical Contact

Parvin P. Waymack, Ph.D., Special Activities Branch (404) 488-4126, or L. Omar Henderson, Ph.D., Clinical Biochemistry Branch (404) 488-4132 Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-25, Atlanta, GA 30333.

Business Contact

Jim Holler, Ph.D., Special Activities Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-25, Atlanta, GA 30333, telephone (404) 488-4176.

Applicants will be judged according to the following criteria:

1. Soundness of the methodological approach and research plan;
2. Adequacy and technical capabilities of the staff to develop the desired method;
3. Ability to develop, produce, market, and support the necessary reagent and instrumentation;
4. Evidence of scientific credibility; and
5. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99-502.

The responses must be made to: Jim Holler, Technology Transfer Coordinator, Division of Environmental Health Laboratory Sciences, NCEHIC, Centers for Disease Control; 1600 Clifton Road, NW., Mailstop F-25; Atlanta, GA 30333.

Dated: July 15, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations; Centers for Disease Control.

[FR Doc. 92-17089 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-18-M

Cooperative Research and Development Agreement, CRADA 92-04

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), National Center for Environmental Health and Injury Control, Division of Environmental Health Laboratory Sciences, desires to enter into a Cooperative Research and Development Agreement (CRADA) with manufacturers of control and reference materials to develop a stable

preparation (preferably lyophilized) suitable for standardizing the measurement of Apo B and low density lipoprotein (LDL) cholesterol. The collaborator and CDC will jointly perform research aimed at the development of a stable lyophilized reference material which is essentially matrix free and closely approximates fresh human serum in the measurement of Apo B and LDL-cholesterol. The CDC will provide technical expertise, consultation and guidance, analytical support, and evaluation and testing of the reference sera.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and with an option for an exclusive royalty-bearing license to the collaborator with which the CRADA is made. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, the CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

SUPPLEMENTARY INFORMATION: This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

Technical Contact

L. Omar Henderson, Ph.D., Clinical Biochemistry Branch (404) 488–4132 or Parvin P. Waymack, Ph.D., Special Activities Branch (404) 488–4126, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta, GA 30333.

Business Contact

Jim Holler, Ph.D., Special Activities Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta, GA 30333, telephone (404) 488–4176.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan and approach;
2. Adequacy and technical capabilities of the staff to develop the desired reference material;
3. Ability to maintain, store, distribute, and support the production of reproducible lots of reference material;
4. Evidence of scientific credibility; and
5. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Jim Holler, Technology Transfer Coordinator, Division of Environmental Health Laboratory Sciences, NCEHIC, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta GA 30333.

Dated: July 15, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–17090 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92F–0261]

Cardolite Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cardolite Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-pentadecenyl phenol mixture (obtained from cashew nutshell liquid) reacted with formaldehyde and ethylenediamine in a ratio of 1:2:2 as an epoxy curing agent in resins and coatings intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4326) has been filed by Cardolite Corp., c/o 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposes to amend the food additive regulations to provide for the safe use of 3-pentadecenyl phenol mixture (obtained from cashew nutshell liquid) reacted with formaldehyde and ethylenediamine in a ratio of 1:2:2 as an epoxy curing agent in resins and coatings intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–17060 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–01–F

[Docket No. 91P–0335]

Canned Tuna Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit, issued to Bumble Bee Seafoods, Inc., to market test products designated as "chunk light tuna with jalapeno in water" and "chunk light tuna with jalapeno in oil" that deviate from the U.S. standards of identity for canned tuna (21 CFR 161.190), to increase the area of distribution, and to increase the amount of chunk light tuna with jalapeno in oil to be distributed.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit (56 FR 48212, September 24, 1991) to Bumble Bee Seafoods, Inc., 5775 Roscoe Ct., San Diego, CA 92123, to market test in interstate commerce canned tuna products formulated by adding chopped or diced jalapeno peppers that have been previously prepared and packed in brine. The agency issued the permit to facilitate market testing in the southwestern United States.

The test products deviate from the U.S. standard of identity for canned

tuna (21 CFR 161.190) in that they contain diced or chopped green jalapeno peppers. The amount of jalapeno peppers added does not exceed 10 percent of the water capacity of the can. Jalapeno peppers replace part of the liquid (water or oil) and do not affect the tuna fish fill portion. The test products meet all requirements of the standard with the exception of this deviation.

Bumble Bee Seafoods, Inc., has requested that FDA amend its temporary permit by increasing the area of distribution to include the entire United States and its territories and possessions. The firm also requested that FDA amend its temporary permit to increase the amount of chunk light tuna with jalapeno in oil from 300,000 cases containing 24 cans of tuna with jalapeno peppers in soybean oil, each can weighing 175 grams (6 1/8 ounces), to 400,000 cases. The amount of tuna with jalapeno peppers in spring water to be market tested remains the same. The purpose of the amendment is to provide the permit holder with a broader base for measuring consumer acceptance of the test products.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit to increase the area of distribution to include the entire United States and its territories and possessions and to increase the quantity of chunk light tuna with jalapeno in oil from 300,000 to 400,000 cases. All other terms and conditions of this permit remain the same.

Dated: July 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-17062 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

[Docket No. 92F-0260]

Quantum Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Quantum Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food packaging materials.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4327) has been filed by Quantum Chemical Corp., 11500 Northlake Dr., Cincinnati, OH 45249. The petition proposes to amend the food additive regulations to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food packaging materials.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-17061 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

[Docket No. 92E-0154]

Determination of Regulatory Review Period for Purposes of Patent Extension; ADSOL® Red Cell Preservation Solution System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ADSOL® Red Cell Preservation Solution System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ADSOL® Red Cell Preservation Solution System. ADSOL® Red Cell Preservation Solution System (sodium citrate, citric acid, dextrose, monobasic phosphate, mannitol, and adenine in BTHC plastic blood bags) is indicated for the collection and storage of blood and components under conditions equivalent to those employed with currently approved plastic containers. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ADSOL® Red Cell Preservation Solution System (U.S. Patent No. 4,710,532) from Morflex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 6, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ADSOL® Red Cell Preservation

Solution System represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ADSOL® Red Cell Preservation Solution System is 1,192 days. Of this time, 496 days occurred during the testing phase of the regulatory review period, while 696 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 21, 1988. FDA has verified the applicant's claim that September 21, 1988, was the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1990. FDA has verified the applicant's claim that January 30, 1990, was the date the new drug application (NDA) for ADSOL® (NDA 90-0223) was initially submitted.

3. *The date the application was approved*: December 27, 1991. FDA has verified the applicant's claim that NDA 90-0223 was approved on December 27, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 391 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 21, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 19, 1993, determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1992.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 92-17063 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

[Docket No. 92E-0151]

Determination of Regulatory Review Period for Purposes of Patent Extension; CPD Blood-Pack®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CPD Blood-Pack® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CPD Blood-Pack®. CPD Blood-Pack® (anticoagulent citrate phosphate dextrose solution in PL 2209 plastic containers) is indicated for the collection and storage of blood and components under conditions equivalent to those employed with currently approved plastic containers. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CPD Blood-Pack® (U.S. Patent No. 4,824,893) from Morflex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 6, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CPD Blood-Pack® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CPD Blood-Pack® is 1,192 days. Of this time, 496 days occurred during the testing phase of the regulatory review period, while 696 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 21, 1988. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was September 21, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1990. The

applicant claims January 22, 1990, as the date the new drug application (NDA) for CPD Blood-Pack® (NDA 90–0224) was filed. However, FDA records indicate that NDA 90–0224 was submitted on January 30, 1990.

3. *The date the application was approved*: December 27, 1991. FDA has verified the applicant's claim that NDA 90–0224 was approved on December 27, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 391 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 21, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 19, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 1992.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 92–17064 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–02–5440–10 ZBBB]

Availability of Final Environmental Impact Statement and Report for the Proposed Eagle Mountain Landfill, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, a joint Final Environmental Impact Statement and Report (EIS/EIR) has been prepared by the Bureau of Land Management and County of Riverside, California for the proposed Eagle Mountain Landfill. The Final EIS/EIR includes minor modifications to the proposed action based on public comment, new regulations, and further analysis. Responses to all public comments and statements given at the various public hearings are also included. The EIS/EIR describes and analyzes four alternatives including the proposed project. Mine Reclamation Corporation has proposed to utilize the Kaiser Steel Resources, Inc., Eagle Mountain Mine site in Riverside County, California, and an associated railroad spur for a Class III waste disposal facility. The site would also be used for the storage of recyclable materials, rail and equipment maintenance. The proposal includes a land exchange and application for a right-of-way with the BLM and a Specific Plan Amendment with the County. The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues as desert tortoise, air and water quality, visual and cultural resources, and public safety. A Record of Decision will be prepared by the BLM, however, a decision will not be made until after the BLM has received the Biological Opinion from the U.S. Fish and Wildlife Service. It is expected that the Biological Opinion will be received before the end of November, 1992.

Public reading copies are available for review at the following libraries:

BLM Library, Service Center, Denver, CO
California State Library, Government Publications, Sacramento, CA
Coachella Branch Library, Coachella, CA
Desert Hot Springs Branch Library, Desert Hot Springs, CA
Indio Branch Library, Indio, CA
Lake Tamarisk Branch Library, Desert Center, CA
Los Angeles Public Library, Fifth St., Los Angeles, CA
Los Angeles Public Library, Spring St., Los Angeles, CA
Palm Desert Branch Library, Palm Desert, CA
Palm Springs Library Center, Palm Springs, CA
Palo Verde Valley District Library, Blythe, CA
Central Library, Seventh St., Riverside, CA
San Bernardino County Library, Joshua Tree, CA
San Bernardino County Library, Adobe Rd., Yucca Valley, CA
San Bernardino County Library, 29 Palms Hwy., Yucca Valley, CA
San Bernardino Public Library, West 6th St., San Bernardino, CA
UC Riverside Library, Government Publications, Riverside, CA

Copies are also available for review at the following BLM and County offices:

Bureau of Land Management, Palm Springs-South Coast RA, 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000.
Bureau of Land Management, CA Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.
Riverside County, Planning Dept., County Admin. Office, 4080 Lemon St., 9th Flr., Riverside, CA 92501–3651.
Bureau of Land Management, California State Office, Federal Office Bldg., 2800 Cottage Way, Rm. E–2841, Sacramento, CA 95825.
Riverside County Planning Dept., Bermuda Dunes Office, 79733 Country Club Dr., Bermuda Dunes, CA 92201.

Comments on the environmental documents or the project will be accepted by the BLM for a 30 day period ending August 21, 1992. Your comments will be considered in arriving at BLM's decision on the land exchange and right of way actions. Please send your comments to: Bureau of Land Management, Palm Springs-South Coast Resource Area, Attn: Steve Nagle, 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000.

Dated: June 26, 1992.

Steve Nagle,

Acting Area Manager.

[FR Doc. 92–16025 Filed 7–20–92; 8:45 am]

BILLING CODE 4310–40–M

[AK–919–02–4830–02–ADVB]

Northern Alaska Advisory Council Public Meeting

The Northern Alaska Advisory Council will hold a public meeting, Tuesday, August 25, 1992, in the dining room of the new kitchen at Coldfoot Services, south of the Arctic Acres Inn, at Coldfoot, Alaska (mile 175 Dalton Highway). The public meeting will start at 8 p.m. and end at 9:30 p.m. Public comment will be taken from 8:30 p.m. to 9 p.m.; written comments may be submitted.

The meeting will be held during a field trip that will familiarize the council members with Bureau of Land Management facilities along the Dalton Highway. During the August 24 to 26 trip, and during the public meeting, the council will discuss the present status of public facilities along the Dalton, and the need to develop facilities to accommodate visitor safety, dispense information and protect and conserve

the public land and its natural resources.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: July 14, 1992.

Roger Bolstad,

Designated District Manager.

[FR Doc. 92–17091 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–JA–M

[NV–930–92–4212–14; N–45233]

Corrected Realty Action Non-Competitive Sale of Public Lands in Clark County, NV

The Notice of Realty Action published in the **Federal Register** on June 12, 1992 (57 FR 25075; FR Doc 92–13805), is hereby corrected with respect to the authorization under which a portion of the sale will occur. The correction is as follows:

The land described below will be sold under the Act of October 21, 1976; 90 Stat. 2750 (P.L. 94–579):

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 3: Lots 6 through 12, SW¼NW¼, W½SW¼;
Sec. 4: Lots 5 through 12, SE¼NE¼, E½SE¼.

Dated: July 9, 1992.

Ben Collins,

District Manager.

[FR Doc. 92–17070 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–HC–M

[ID–942–02–4730–12]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 13, 1992.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 19 and 30, T. 8 S., R. 18 E., Boise Meridian, Idaho, Group No. 797, was accepted, July 7, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: July 13, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–17096 Filed 7–20–92; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Rocky Mountain National Park, CO; Boundary Adjustment Order

AGENCY: National Park Service, Interior.

ACTION: Boundary adjustment order.

Order adjusting the boundary of Rocky Mountain National Park to include certain lands.

SUMMARY: Pursuant to the authority contained in the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. Sec. 192b–10, and as certain lands authorized for acquisition by the Secretary of the Interior have now been acquired, the boundaries of Rocky Mountain National Park are being adjusted accordingly.

DATES: The effective date of this Order shall be July 21, 1992.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2610.

SUPPLEMENTARY INFORMATION: The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Rocky Mountain National Park and, upon acquisition, to adjust the park boundary to include such lands with in the park. The total acreage of Rocky Mountain National Park will be increased by 59.45 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Rocky Mountain National Park to be administered in accordance with the laws and regulations applicable thereto:

Township 4 North, Range 73 West, 6th Principal Meridian, Larimer County, Colorado.
Lots 1, 2, 3 and 5 through 15, inclusive, Baldpate Estates, according to the plat thereof recorded April 3, 1986, at Reception No. 86016631,

Containing 59.45 acres, more or less.

Dated: July 14, 1992.

Michael D. Snyder,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 92–17121 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–70–M

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (1988), of the second meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on August 26, 27, and 28, 1992 in Denver, CO.

All meetings will be held in the Mount Vernon Room of the Sheraton Denver West Hotel and Conference Center, 360 Union Blvd, Lakewood, CO. Meetings will begin at 8:30 a.m. and conclude not later than 5 p.m.

The matters to be discussed at this meeting include: development of interim guidance concerning written summaries, inventories, and notification; development of draft proposed regulations implementing the statute; and the dispute resolution procedures to be followed by the committee.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon or Dr. C. Timothy McKeown, Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, Archeological Assistance Division, 800 North Capital Street, NW., Washington, DC 20001.

Dated: July 16, 1992.

Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 92–17122 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 11, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 15, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Craig Mansion, 131 E. Country Club Dr., Phoenix, 92001013

ARKANSAS

Logan County

New Blaine School, Jct. of AR 22 and Spring Rd., New Blaine vicinity, 92001007

Phillips County

Battery A Site, Battle of Helena, NW of jct. of Adams and Columbia Sts., Helena, 92001012

Battery B Site, Battle of Helena, NE of jct. of Liberty St. and Summit Rd., Helena, 92001011

CALIFORNIA

Napa County

Earl, Thomas, House, 1721 Seminary St., Napa, 92000996

Wulff, Capt. N.H., House, 549 Brown St., Napa, 92000994

San Diego County

Kinsey, Martha, House, 1624 Ludington Ln., La Jolla, 92000968

San Mateo County

Simmons, William Adam, House, 751 Kelly Ave., Half Moon Bay, 92000995

CONNECTICUT

Fairfield County

Deacon's Point Historic District, Roughly bounded by Seaview Ave. and Williston, Bunnell and Deacon Sts., Bridgeport, 92001019

Hartford County

Burwell, Ernest R., House, 161 Grove St., Bristol, 92001009

Litchfield County

Wilton Center Historic District, Roughly, area around jct. of Lovers Ln. and Belden Hill and Ridgefield Rds., Wilton, 92001003

GEORGIA

Liberty County

Liberty County Jail, 302 S. Main St., Hineville, 92001036

ILLINOIS

Cook County

Wheeler—Magnus Round Barn (Round Barns of Illinois TR), 811 E. Central Rd., Arlington Heights, 92001017

Kane County

St. Mary's Church of Gilberts, 10 Matteson St., Gilberts, 92001018

Lee County

Amboy Illinois Central Depot, 50 S. East Ave., Amboy, 92001015

Ogle County

City and Town Hall, Jct. of Fourth Ave. and Sixth St., Rochelle, 92001006

Sangamon County

Lincoln, Abraham, Memorial Garden, 2301 E. Lake Dr., Springfield, 92001016

Tazewell County

Herget, Carl, Mansion, 420 Washington St., Pekin, 92001005

Warren County

Weir, William S., Jr., House, 402 E. Broadway, Monmouth, 92001004

MASSACHUSETTS

Berkshire County

Society of the Congregational Church of Great Barrington, 241 and 251 Main St., Great Barrington, 92000999

Middlesex County

Saxonville Historic District, Roughly, a long Elm, Danforth, Central, Water and Concord Sts., Framingham, 92000992

Norfolk County

Clapp, Lucius, Memorial, 6 Park St., Stoughton, 92000998

MISSOURI

Franklin County

AME Church of New Haven, 225 Selma St., New Haven, 92001002

Jefferson County

Leight, Valentine, General Store, 4566 Main St., House Springs, 92001014

Pike County

Griffith-McCune Farmstead Historic District, MO WW E of jct. with MO D, Eolia vicinity, 92001001

OHIO

Cuyahoga County

Brecksville Trailside Museum, Chippewa Cr. Dr. SE of jct. with OH 82, Brecksville, 92000988

Jefferson County

Steubenville Pottery Company Buildings, Co. Rd. 44 SW of jct. with OH 7, Steubenville vicinity, 92001034

Monroe County

Salem Church, 48452 OH 255, Sardis vicinity, 92000989

Washington County

Spencer's Landing, 4 E. Fifth St., Belpre, 92001035

PENNSYLVANIA

Montgomery County

West Laurel Hill Cemetery, 227 Belmont Ave., Lower Merion Township, Bala Cynwyd, 92000991

Wayne County

Damacus Historic District (Upper Delaware Valley, New York and Pennsylvania, MPS), Roughly, PA 371 from Galilee Rd. to the Delaware R. and adjacent part of Rt. 63027 S of PA 371, Damascus, 92001000

York County

Melchinger, Englehart, House, 5 N. Main St., Dover, 92000990

TEXAS

Hays County

Dobie, John R., House, 282 Old Kyle Rd., Wimberley, 92001024

VERMONT

Franklin County

Montgomery House, VT 118, Montgomery, 92000997

Orleans County

Sweeney, J.S., Store, Barn, Livery and Hall, Jct. of VT 105 and Town Hwy. 3 (Main St.), Charleston, 92000993

Windsor County

Woodstock Warren Through Truss Bridge (Metal Truss, Masonry & Concrete Bridges in Vermont MPS), Town Hwy. 24 across the Ottauquechee R., Woodstock vicinity, 92000987

VIRGINIA

Amherst County

Athlone, Jct. of VA 151 and VA 674, Amherst vicinity, 92001029

Chesterfield County

Chesterfield County Courthouse and Courthouse Square, N side VA 10, 350 ft. E of jct. with VA 655, Chesterfield, 92001008

Frederick County

Newtown-Stephensburg Historic District, Roughly, Main St. from city limit to Farm View Dr. and adjacent areas of Mulberry and German Sts., Stephens City, 92001033

Richmond Independent City

Bacon, Nathaniel, School (Public Schools of Richmond MPS), 815 N. 35th St., Richmond, 92001031

Cary, John B., School (Public Schools of Richmond MPS), 2100 Idlewood Ave., Richmond (Independent City), 92001030

Springfield School (Public Schools of Richmond MPS), 608 N. 26th St., Richmond, 920001032

Suffolk Independent City

Godwin-Knight House, 140 King's Hwy., Chuckatuck, 92001028

WISCONSIN

Iowa County

Archeological Site No. 47Ia168 (Wisconsin Indian Rock Art Sites MPS), Address Restricted. Brigham, 92001025

Archeological Site No. 47Ia167 (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Brigham, 92001026

Ozaukee County

Hilgen, Friedrich and Louisa, House, N47 W6033 Spring St., Cedarburg, 92001027.

[FR Doc. 92-16974 Filed 7-20-92; 12:01 pm]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32049 (Sub-No. 1)]

Central of Tennessee Railway and Navigation Company, Inc.; Modified Rail Certificate

On March 26, 1992, Central of Tennessee Railway and Navigation Company, Incorporated (Centennrail) filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, to operate a rail line beginning at milepost 205 at Nashville, TN and extending to milepost 180 at Ashland City, TN, a distance of 25 miles with 3 miles of switching leads.[1]

The line is owned by Cheatham County Rail Authority (CCRA), a State of Tennessee public entity, which purchased it from the Illinois Central Gulf Railroad Company (ICG) in 1988 after ICG had been authorized to abandon it. CCRA has given the initial operator, McCormick, Ashland City & Nashville Railroad Co., Inc., (MACO), notice under a default provision in its operations contract and has selected Centennrail to be the new contract operator.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Decided: July 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17120 Filed 7-20-92; 12:01 pm]

BILLING CODE 7035-01-M

[1] This notice was incorporated in a broad request for relief by Centennrail and Cheatham County Rail Authority (CCRA), docketed as Finance Docket No. 32049, in which CCRA seeks an adverse discontinuance of authority for McCormick, Ashland City & Nashville Railroad Co., Inc., (MACO) to operate the line and replacement of MACO as operator by Centennrail. The discontinuance aspect is being handled separately under the lead docket number and this modified certificate aspect has been renumbered as Finance Docket No. 32049 (Sub-No. 1).

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin Violation of the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that a Consent Decree in *United States* v. *Mennen de Puerto Rico, Ltd. and the Mennen Company ("MENNEN")*, Civil Action No. CV 92-1927 (RLA), was lodged with the United States District Court for the District of Puerto Rico on July 9, 1992. The Consent Decree provides for payment of $563,700 as civil penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System ("NPDES") Permit No. PR0025135 for Mennen's manufacturing plant located in Juncos, Puerto Rico. The Consent Decree also requires Mennen to conduct certain remedial actions in order to achieve compliance with the effluent limitations contained in NPDES Permit No. PR0025135. Mennen must transport its process and sanitary wastewater to Puerto Rico Aqueduct and Sewerage Authority's Puerto Nuevo Sewage Treatment Plant and modify its stormwater management practices as provided in the Consent Decree.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Mennen de Puerto de Puerto Rico, Ltd. and the Mennen Company*, D.O.J. Ref. No. 90-5-1-1-3771.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Office Building, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-17071 Filed 7-20-92; 12:01 pm]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS No. 1400SOM-92; AG Order No. 1607-92]

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Nationality Act as amended (8 U.S.C. 1254a) (the "Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, 105 Stat. 1733, December 12, 1991 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. On September 16, 1991, the Attorney General designated Somalia for Temporary Protected Status for a period of 12 months. Order No. 1525-91, 56 FR 46804.

This notice extends the designation of Somalia under the Temporary Protected Status program for an additional 12 months, in accordance with section 244A(b)(3) (A) and (C) of the Act. This notice also makes clear that eligibility for Temporary Protected Status benefits is granted not only to nationals of Somalia but also to persons having no nationality who last habitually resided in Somalia.

EFFECTIVE DATE: This designation is effective on September 17, 1992, and will remain in effect until September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang or Marcela C. Moglia, Examiners, Immigration and Naturalization Service, room 5250, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

Notice of Extension of Designation of Somalia Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act as amended (8 U.S.C. 1254a) (the "Act") and pursuant to section 244A(b)(3) (A) and (C) of the Act, I find that there still exist extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, from returning to Somalia in safety, as a result of the continued armed conflict in that nation.

I further find that permitting nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Somalia under section 244A(b) of the Act is extended for an additional 12-month period from September 17, 1992, to September 17, 1993.

(2) I estimate that there are no more than 2,000 Somalian nationals, and aliens having no nationality who last habitually resided in Somalia, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, an application for Temporary Protected Status during the extended period of designation provided by this notice must be filed pursuant to the provisions of 8 CFR part 240.

(4) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who was granted Temporary Protected Status during the 12-month period of designation that began on September 16, 1991, must file a new Application for Temporary Protected Status, Form I–821 together with an Application for Employment Authorization, Form I–765, within the thirty (30) day period prior to the one-year anniversary of the original grant of Temporary Protected Status to such alien in order to be eligible for Temporary Protected Status during the period between such anniversary and September 17, 1993.

(5) An Application for Temporary Protected Status, Form I–821, filed during the period of extended designation by a national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who has been granted Temporary Protected Status during the 12-month period of designation that began on September 16, 1991, will be without fee.

(6) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization pursuant to the provision of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–765 together with Form I–821 for information purposes, but in such cases Form I–765 will be without fee.

(7) Pursuant to section 244A(b)(3) of the Act, the designation of Somalia under the Temporary Protected Status Program shall be reviewed again at least 60 days before the end of this extended period of designation, and of any subsequent extended period of designation, to determine whether the conditions for such designation continue to exist. Notice of each such determination, including the basis for the determination, shall be published in the **Federal Register**.

(8) Information concerning Temporary Protected Status for nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 14, 1992.

George J. Terwilliger, III,

Acting Attorney General.

[FR Doc. 92–17084 Filed 7–20–92; 12:01 pm]

BILLING CODE 4410–01–M

Attorney General

Certification of the Attorney General McIntosh County, Georgia

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in McIntosh County, Georgia. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: July 17, 1992.

George J. Terwilliger,

Acting Attorney General of the United States.

[FR Doc. 92–17305 Filed 7–17–92; 7:45 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,229]

Cheyenne Petroleum Co., Oklahoma City, OK; Affirmative Determination Regarding Application for Reconsideration

On June 26, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment assistance for workers at the subject firm. The Department's Negative Determination was issued on June 8, 1992 and published in the **Federal Register** on June 26, 992, (57 FR 28705).

The former worker claims that the Department's investigation was flawed and that Cheyenne Petroleum owns and manages wells and produces crude oil and natural gas.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of July 1992.

Stephan A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–17101 Filed 7–20–92; 12:01 pm]

BILLING CODE 4510–30–M

[TA–W–27,047]

Global Drilling Fluids, Inc., a/k/a Global Chemicals, Inc., Lafayette, LA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment

Assistance on May 21, 1992 applicable to all workers of Global Drilling Fluids, Inc., Lafayette, Louisiana. The notice was published in the **Federal Register** on June 12, 1992 (57 FR 25080).

New information received from the company shows that the company's name was changed from Global Chemicals, Inc., to Global Drilling Fluids, Inc., on March 19, 1991. The claimants' wages are being reported under Global Chemicals, Inc. Accordingly, the Department is correcting the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Global Drilling Fluids, Inc., and Global Chemicals, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–27,047 is hereby issued as follows:

"All workers of Global Drilling Fluids, Inc., also known as a/k/a Global Chemicals, Inc., Lafayette, Louisiana who became totally or partially separated from employment on or after March 13, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–17102 Filed 7–20–92; 12:01 pm]

BILLING CODE 4510–30–M

[TA–W–27,068]

Mustang Fuel Corp., Oklahoma City, OK; Notice of Affirmative Determination Regarding Application for Reconsideration

On July 1, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's decision was issued on June 3, 1992 and published in the **Federal Register** on June 26, 1992, (57 FR 28705).

A former worker states that the Department mistakenly denied their petition on the grounds that the workers do not produce an article. A review of the investigation findings shows that the company is an integrated production company and needs further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of July 1992.

Stephen A. Wander,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–17100 Filed 7–20–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,197]

O&K Trojan, Inc., Batavia, NY; Negative Determination Regarding Application for Reconsideration

By an application dated July 8, 1992, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 25, 1992 and was published in the **Federal Register** on July 8, 1992 (57 FR 30234).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company states that it imports for its network of distributors and as a result a customer survey would not show whether the customers imported.

The Department's denial was based on the fact that the increased import criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade were not met for front end loaders. U.S. imports of construction machinery declined absolutely and relative to domestic shipments in 1991 compared to 1990.

Investigation findings show that company imports declined in 1991 compared to 1990 and in the first quarter of 1992 compared to the first quarter of 1991. Production ceased in March 1992. Workers were covered by a previous certification that expired on June 12, 1992.

Customer comments reveal that the demand for front end loaders has been weak because of the recession.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–17099 Filed 7–20–92; 12:01 pm]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the administrators for coal mine safety and health and metal and nonmetal mine safety and health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: July 15, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–88–210–C
FR Notice: 53 FR 49256
Petitioner: Cyprus Emerald Resources Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to use 2400-volt a.c. cables and equipment to power permissible longwall mining equipment within 150 feet of pillar workings, such as the longwall gob, or in by the last open crosscut with specific conditions as outlined in the petition considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–33–C
FR Notice: 55 FR 10525
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.309(a)
Summary of Findings: Petitioner's proposal to install methane sensors in all developing sections of the mine to measure ventilation and to assign a certified person to continuously monitor methane in the event of a sensor failure considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–34–C
FR Notice: 55 FR 10525
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.309(a)
Summary of Findings: Petitioner's proposal to install methane sensors in all developing sections of the mine to measure ventilation and to assign a certified person to continuously monitor methane in the event of a sensor failure considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–39–C
FR Notice: 55 FR 11273
Petitioner: Mettiki Coal Corporation
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entries with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–40–C
FR Notice: 55 FR 11274
Petitioner: Mettiki Coal Corporation
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to install a early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entries with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–41–C
FR Notice: 55 FR 11453
Petitioner: Cyprus Empire Corporation
Reg Affected: 30 CFR 75.507
Summary of Findings: Petitioner's proposal to use air for the belt haulage entry to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–181–C
FR Notice: 55 FR 52331
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–182–C
FR Notice: 55 FR 52333
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–184–C
FR Notice: 55 FR 52332
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–04–C
FR Notice: 56 FR 8800
Petitioner: Cyprus Empire Corporation
Reg Affected: 30 CFR 75.902
Summary of Findings: Petitioner's proposal to operate a submersible pump in a borehole with a modified ground monitor system considered acceptable alternate method. Granted with conditions for the North Angle pump.

Docket No.: M–91–36–C
FR Notice: 56 FR 22889
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–40–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate the face area and install a low-level carbon monoxide detection system in the belt entry considered acceptable alternate method. Granted with conditions to all belt entries except belt entries used in the two-entry system.

Docket No.: M–91–41–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in the belt entry considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–42–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–49–C
FR Notice: 56 FR 27976
Petitioner: Twentymile Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2400-volt cables and equipment to power permissible longwall mining equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–52–C
FR Notice: 56 FR 27976
Petitioner: Sahara Coal Company, Inc.
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose the electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–60–C
FR Notice: 56 FR 33310
Petitioner: Cyprus Shoshone Coal Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2400-volt cables and equipment to power permissible longwall equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–61–C
FR Notice: 56 FR 33310
Petitioner: Dans Coal Company (formerly Fantasia Mining Company)
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors on permissible three-wheel battery-powered tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–65–C
FR Notice: 56 FR 40915
Petitioner: Rocky Top Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use increased rope strength and a secondary rope on a slope conveyance (gunboat) to transport persons considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–68–C
FR Notice: 56 FR 40915
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to seal and mine through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–76–C
FR Notice: 56 FR 50597
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1100–2(b)
Summary of Findings: Petitioner's proposal to install a waterline in the supply entry, adjacent to the conveyor belt entry,

hydrants (water outlets) located at a crosscut connecting the supply entry and the belt entry considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–85–C
FR Notice: 56 FR 54898
Petitioner: Golden Oak Mining Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Due to hazardous roof conditions petitioner's proposal to establish evaluation points a specific crosscuts in the return aircourse instead of traveling between the crosscuts considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–86–C
FR Notice: 56 FR 54898
Petitioner: New Warwick Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all present and future belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–87–C
FR Notice: 56 FR 54898
Petitioner: New Warwick Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all present and future belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–89–C
FR Notice: 56 FR 58094
Petitioner: Sunnywide Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's states that examining seals will result in a diminution of safety due to arches being installed for roof support considered acceptable alternate method. Granted with conditions for the three areas containing seals where arches have been installed and back filled.

Docket No.: M–91–90–C
FR Notice: 56 FR 58094
Petitioner: Wyoming Fuel Company
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinkles for its fire protection system at the main and secondary belt conveyor drives considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–92–C
FR Notice: 56 FR 58094
Petitioner: Energy West Mining Company
Reg Affected: 30 CFR 75.1100–2(e)
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers or one extinguisher with at least twice the minimum capacity of a portable fire extinguisher at temporary electrical installations instead of one extinguisher and 240 pounds of rock dust considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–93–C
FR Notice: 56 FR 58094
Petitioner: McElroy Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose the electrical equipment in a fireproof structure instead of coursing air currents to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–95–C
FR Notice: 56 FR 58094
Petitioner: C&B Mining Company
Reg Affected: 30 CFR 75.301
Summary of Findings: Petitioner's proposal that the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any prior set of developing entries by 5,000 cfm and reaching the intake end of a pillar line be 5,000 cfm considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–96–C
FR Notice: 56 FR 64278
Petitioner: Sextet Mining Corporation
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal that MSHA's Decision and Order, granted on September 17, 1990, for docket number M–89–137–C be amended as follows: Amend paragraph 1(a) to require installation of a low-level carbon monoxide detection system in all belt entries; amend paragraph 1(b) to require locating the carbon monoxide monitoring devices so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in paragraph 1(c) and paragraph 10; and omit paragraph 11 because belt haulage entries to ventilate the working faces are not used in the mine.

Docket No.: M–91–98–C
FR Notice: 56 FR 58094
Petitioner: The Ohio Valley Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a fireproof structure instead of coursing the air currents to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–100–C
FR Notice: 56 FR 58094
Petitioner: Consol Pennsylvania Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use a high-voltage cable inby the last open crosscut to power a longwall shearing machine considered acceptable alternate method for the Bailey Mine. Granted with conditions.

Docket No.: M–91–108–C
FR Notice: 56 FR 65513
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables inby the last open crosscut to power the longwall considered acceptable alternate method for the Dilworth Mine. Granted with conditions.

Docket No.: M–91–109–C
FR Notice: 56 FR 65513
Petitioner: Eagle Nest, Inc.
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to plug and mine through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–116–C
FR Notice: 56 FR 65514
Petitioner: Shell Mining Company
Reg Affected: 30 CFR 77.900
Summary of Findings: Petitioner's proposal to use an automatic reset circuit breaker to supply power to electrical equipment instead of using a manual reset breaker considered acceptable for the pit dewatering pumps in the North Rochelle Mine. Granted with conditions.

Docket No.: M–91–130–C
FR Notice: 57 FR 3220
Petitioner: Eagle Run Coal Company, Inc.
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate gunboats to transport persons with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connection device considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–01–C
FR Notice: 57 FR 3221
Petitioner: Eastern Associated Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cable supply power in the 8 Right 2 Left and 3 Left North Mains Longwall sections of the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–12–C
FR Notice: 57 FR 7799
Petitioner: Kerr-McGee Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal that MSHA's Decision and Order, granted October 21, 1991, docket number M–91–54–C be amended to allow the use of the MSHA approved fire resistant styrene butadiene rubber (SBR) conveyor belt within the two 450 feet rock tunnels and monitored by both a low-level carbon monoxide system and a methane monitoring system considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–12–M
FR Notice: 56 FR 40915
Petitioner: Sunshine Precious Metals, Inc.
Reg Affected: 30 CFR 57.11041
Summary of Findings: Petitioner's proposal to post a warning sign instead of a landing gate at the bottom of every slope in which the timber slide ladderway inclinations exceed 70 degrees considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–15–C
FR Notice: 56 FR 46208
Petitioner: Hecla Mining Company
Reg Affected: 30 CFR 57.14162
Summary of Findings: Petitioner's proposal to operate one-car trains with out trip lights considered acceptable alternate method. Granted with conditions.

[FR Doc. 92–17098 Filed 7–20–92; 12:01 pm]
BILLING CODE 4510–43–M

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under

section 101(c) of the Federal Mine Safety and Health Act of 1977.

This notice also amends a petition for modification (57 FR 28882) of application of mandatory safety standard to correct the standard number and cite as follows:

1. Consolidation Coal Company Amendment

(Docket No. M–92–68–C)

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) for its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Petitioner proposes to make a weekly examination of certain areas of the mine and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

2. Westmoreland Coal Company

(Docket No. M–92–70–C)

Westmoreland Coal Company has filed a petition to modify the application of 30 CFR 75.1105 to its Holton Mine (I.D. No. 44–04197) located in Lee County, Virginia. The petitioner requests that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M–89–115–C be amended.

3. Eastern Associated Coal Corporation

(Docket No. M–92–71–C)

Eastern Associated Coal Corporation has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Harris No. 2 Mine (I.D. No. 46–01270) located in Boone County, West Virginia. The petitioner proposes to use high-voltage cables inby the last open crosscut at the working longwall sections with appropriate safety precautions. The lower voltage cables currently being used draw large current requiring a high breaker setting, which can cause excessive heat and voltage regulation problems. Petitioner states that the proposed method will provide no less than the same measure of protection as the standard.

4. Buck Creek Coal, Inc.

(Docket No. M–92–72–C)

Buck Creek Coal, Inc. has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Buck Creek Mine (I.D. No. 12–02033) located in Sullivan County, Indiana. The petitioner proposes to operate a diesel powered generator without an earth-referenced ground to supply electrical power to mobile mining equipment when such mining equipment is being moved from one area of the mine to another. Petitioner states that the proposed method will provide no less than the same measure of protection as the standard.

5. Leeco, Inc.

(Docket No. M–92–73–C)

Leeco, Inc., has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 62 (I.D. No. 15–16412) located in Perry County, Kentucky. The petitioner proposes to implement an alternate test drilling plan by drilling horizontal testholes into the coal seam in advance of the working face within the drill zone which will provide a higher degree of safety to the miners than that afforded by the standard.

6. Island Creek Coal Company

(Docket No. M–92–74–C)

Island Creek Coal Company, 250 West Main Street, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) for its Dobbin Mine (I.D. No. 46–05480), its Laurel Run Mine (I.D. No. 46–02845), and its North Branch Mine (I.D. No. 46–01309) all located in Grant County, West Virginia. Petitioner proposes to use high voltage cables with ground check wires smaller than No. 10 A.W.G. when used for transmitting power on high-voltage longwall systems and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

7. Sahara Coal Company, Inc.

(Docket No. M–92–75–C)

Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 21 (I.D. No. 11–00784) located in Saline County, Illinois. Petitioner proposes to establish air measurement stations where the quantity and quality of air entering, flowing through, and returning from each affected return air course can be determined and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

8. McElroy Coal Company

(Docket No. M–92–76–C)

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. Petitioner proposes to establish a checkpoint where air measurement and methane checks would be made and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

9. Consolidation Coal Company

(Docket No. M–92–77–C)

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Petitioner proposes to enclose specific electrical installations in a fireproof structure with fireproof doors. A fire suppression system would be installed over these installations, and no combustible material would be stored within the electrical installation enclosure. The air ventilating these installations would be monitored by CO sensors. Petitioner states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1992. Copies of these petitions are available for inspection at that address.

Dated: July 15, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92–17097 Filed 7–20–92; 12:01 pm]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission (new, revision, or extension): Revision.

2. The title of the information collection: NRC Form 4, "Cumulative Occupational Exposure History." NRC Form 5, "Occupational Exposure Record for a Monitoring Period."

3. The form number if applicable: NRC Forms 4 and 5.

4. How often the collection is required: NRC Form 4 is generally prepared by exposed individuals, then reviewed and maintained by the licensee. It is not submitted to the NRC. NRC Form 5 is prepared by the licensee and transmitted to the NRC annually.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the total number of responses: NRC Form 4—40,000/year. NRC Form 5—400,000/year.

7. An estimate of the total number of hours needed annually to complete the requirement or request:

NRC Form 4—7,667 hours; (16,667 existing forms × 0.25 hr/form=4167 hours) + (23,333 revised forms × 0.15 hr/form=3500 hours) or an average of .93 hours per licensee.

NRC Form 5—129,828 hours; 125,000 hours for preparation of the form (166,667 existing forms × 0.4 hr/form=66,667 hours) + (233,333 revised forms × 0.25 hr/form=58,333 hours) and 4,828 hours for submittal of the revised forms or an average of 15.7 hours per licensee.

8. An indication of whether section 3504(l), Public Law 95–511 applies: Not applicable.

9. Abstract: NRC Form 4 is used to record a summary of the previous occupational exposures of individuals to ensure that exposure does not exceed regulatory limits. NRC Form 5 is used to record and report the results of individual monitoring for occupational exposure to radiation during a 1-year period to ensure compliance with annual occupational exposure limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0005 and 3150–0006), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of July 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–17145 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a revision to an exemption from certain requirements of 10 CFR part 50, appendix J, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station Unit No. 1, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated July 9, 1992, the licensee requested a revision to a schedular exemption granted on March 20, 1992, pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, appendix J, regarding: (1) Leak testing of the emergency condenser condensate return line valves 39–03, –04, –05, and –06; (2) leak testing of the shutdown cooling system isolation valves 38–01, –02, –12, and –13; and (3) that the leakage of these valves be included in the 0.60 L_a acceptance criteria for Type B and C tests. The March 20, 1992, schedular exemption had been issued as an extension to two previously-issued schedular exemptions (October 17, 1988 and August 29, 1989). The requested revision would delete emergency condenser condensate return line valves 39–05 and 39–06 from the March 20, 1992, exemption and provide justification for continuing a schedular exemption for emergency condenser condensate return line check valves 39–03 and 39–04. The previously approved (March 20, 1992) portion of the schedular exemption for the shutdown cooling system isolation valves (38–01, –02, –12 and –13) would also be continued.

The March 20, 1992, schedular exemption was issued to be valid until startup from the fall of 1994 refueling outage since the NRC staff determined that the exemption would not cause undue risk to the public health and safety and since special circumstances existed. The special circumstances included a chemical decontamination of the reactor coolant system and a single draining of the reactor vessel both planned for the 1994 refueling outage which will emphasize mechanical work. Performance of the chemical decontamination and performance of only a single draining of the reactor vessel are expected to reduce overall occupational exposures by approximately 100 person-rem and will also reduce the volume of radwaste generated.

As a result of an extended forced outage that began on May 1, 1992, the licensee was required to gain access to and remove emergency condenser condensate return line check valves 39–03 and 39–04 rather than delay this access until the fall of 1994 refueling outage. Therefore, the NRC staff requested the licensee to reevaluate the basis for the March 20, 1992, schedular exemption.

The duration of the forced outage that began on May 1, 1992, has resulted in the September 1992 refueling outage (reload 12) being rescheduled to early 1993 and reload 13 being rescheduled from fall of 1994 to early 1995. This forced outage has also enabled the licensee to delete emergency condenser condensate return line valves 39–05 and 39–06 from the March 20, 1992, exemption since these valves will be tested prior to restart to ensure compliance with the requirements of 10 CFR part 50, appendix J.

The Need for the Proposed Action

The revised schedular exemption is required to permit the licensee to startup and operate the plant until startup from the refueling outage currently scheduled for early 1995. The existing shutdown cooling system isolation valves and the emergency condenser condensate return line check valves (39–03 and 39–04) are not designed to 10 CFR part 50, appendix J, leak requirements. Testing

of check valves being procured as replacements for the existing check values determined that the replacements would not meet the licensee's system design specifications. Replacement check valves which meet the licensee's system design requirements are not currently available and will not be available for the refueling outage scheduled to begin in January 1993. Without this revision to the previously-granted schedular exemption, restart and operation of this plant after its current forced outage would be delayed until the necessary modifications and testing were completed.

Environmental Impacts of the Proposed Action

The proposed revision of the previously-granted exemption would allow the licensee to continue to operate the plant until the emergency condenser condensate return line check valves and the shutdown cooling isolation valves are modified during the early 1995 refueling outage so that these valves can be leak tested in accordance with the requirements of 10 CFR part 50, appendix J.

The environmental effects of a design basis loss-of-coolant accident involving emergency condenser tubing with the condensate return line check valves leaking in excess of the appendix J limits were evaluated in the Environmental Assessment an Finding of No Significant Impact (53 FR 37376) issued in conjunction with the October 17, 1988, exemption. That assessment concluded that there would be no significant radiological or non-radiological environmental impacts associated with the October 17, 1988, exemption. Likewise, the environmental effects of leakage past the shutdown cooling system isolation valves in excess of the appendix J limits (during normal operation, shutdown, and accident conditions) were evaluated in the Environmental Assessment in Finding of No Significant Impact (54 FR 26279) issued in conjunction with the August 29, 1989, exemption. That assessment also concluded that there would be no significant radiological or nonradiological environmental impacts associated with the August 29, 1989, exemption. Similar conclusions were made in the Notice of Environmental Assessment and Fining of No Significant Impact (57 FR 2791) for the extension of these exemptions issued on March 20, 1992. The proposed revision of the March 20, 1992, exemption will not change the environmental effects (determined to be not significant) of excessive leakage past these valves. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed extensions to these exemptions.

Alternative to the Proposed Action

The NRC staff has concluded that there is no measurable impact associated with the proposed revision of this exemption. Therefore, alternatives to the proposed extension of these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested revision of this exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station Unit No. 1 operations and would result in unwarranted delays in plant startup and operation.

Alternative Use of Resources

The actions associated with the granting of the proposed revision to this exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed revision to the exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed revision to this exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the revision to this exemption as listed herein, which is available fro public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 15th day of July 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–17146 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on July 27, 1992, in Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Monday, July 27, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report related to the Electric Power Research Institute's (EPRI's) requirements document for the evolutionary light water reactors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid

telephone call to the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–17118 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 5, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows: Wednesday, August 5, 1992—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. Qualification of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitttee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1992.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 92–17117 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co., Catawba Nuclear Station, Units 1 and 2; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2 located in York County, South Carolina.

The proposed amendment would revise the Technical Specifications for Unit 1, Cycle 7 reload. Cycle 7 for Catawba Unit 1, scheduled to begin in September 1992, is the second Catawba Cycle for which the reload fuel is supplied by B&W Fuel Company (BWFC). The incoming Batch 9 fuel assemblies are designated as Mark-BW. To support implementation of Mark-BW fuel in the McGuire and Catawba nuclear stations, Duke Power Company (DPC) has developed new methods and models to analyze the plants during normal and off-normal operation. The thermal-hydraulic analytical models are documented in topical report DPC-NE–3000P for non-LOCA transients and BAW–10174 for LOCA. Portions of the analytical methodology are documented in topical report DPC–NE–3001P and DPC–NE–2004PA. The remaining Final Safety Analysis Report (FSAR) Chapter 15 non-LOCA system transient analysis methodology is documented in DPC–NE–3002. The FSAR Chapter 15 LOCA system transient analysis methodology is documented in BAW–10174. The NRC staff has issued safety evaluations on these topical reports.

The licensee states that all of the accidents analyzed in the FSAR have been reviewed for Cycle 7 operation, and that many of the FSAR Chapter 15 system thermal-hydraulic accident analyses sensitive to reload core physics parameters have been reanalyzed using Duke Power methodology. Several bounding transients were analyzed in detail to demonstrate the capability of DPC calculational techniques. The results of these analyses were reported in DPC–NE–3001P. For the other reanalyzed transients, the approved methodology is documented in DPC–NE–3002. The Technical Specifications (TS) that the licensee proposes to be changed are as follows:

Specification	Description of change
2.1.1, 2.2.1	Decreased F_{deltaH} for Mark-BW fuel.
	Removed power range neutron flux negative rate reactor trip.
	Removed Total Allowance, Z value, and Sensor Error terms.
3.1.3.1	Included all accident analyses that would require reevaluation in the event that one full length RCCA is inoperable.
3/4.2.2, 3/4.2.3	Changed F_Q and F_{deltaH} methodology to reflect Duke nomenclature.
	Quantified surveillance requirements.
3/4.2.5	Corrected action item requirement.
3/4.3.3.1	Removed power range neutron flux negative rate reactor trip.
	Removed items associated with RID Bypass System.
3/4.3.3.2	Increased low steam line pressure setpoint.
	Increased feedwater isolation response time.
	Increased steam line isolation response time.
	Removed Total Allowance, Z value, and Sensor Error terms.
	Removed steam line pressure dynamic compensation.
3/4.4.1.2	Changed reactor coolant loop operation requirement.
3/4.4.2.1, 3/4.4.2.2.	Increased pressurizer safety valve lift setpoint tolerance.
3/4.5.1.c	Changed required cold leg accumulator boron concentration.
3/4.5.2	Changed ECCS pump surveillance requirements.
3/4.6.2	Reduced allowable primary to secondary leakage rate.
3/4.6.3	Changed feedwater isolation valve, main steam isolation valve, and main steam isolation bypass valve stroke time from 5 seconds to Not Applicable.
3/4.7.1.4	Increased main steam line isolation valve stroke time.
6.9.1.9	Reflected change to DPC core operating limit methodology.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The following was included in the licensee's analysis.

* * * * *

Power Distribution and Safety Limits

* * * * *

The Catawba Unit 1, Cycle 7 Reload Safety Evaluation Report * * * presents an evaluation which demonstrates that the core reload using Mark-BW fuel will not adversely impact the safety of the plant. During Cycle 7, the core will contain 72 fresh fuel assemblies, 72 burned fuel assemblies supplied by B&W and 49 Westinghouse supplied Optimized Fuel Assemblies (OFA).

A LOCA evaluation for operation of Catawba Nuclear Station with Mark-BW fuel has been completed (BAW 10174, Mark-BW Reload LOCA Analysis for the Catawba and McGuire Units). Operation of the station while in transition from Westinghouse supplied OFA fuel to B&W supplied Mark-BW fuel is also justified in this topical.

BAW–10174 demonstrates that Catawba Nuclear Station continues to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. Large Break LOCA calculations completed consistent with an approved evaluation model (BAW–10168P and revisions) demonstrate compliance with 10 CFR 50.46 for breaks up to and including the double ended severance of the largest primary coolant pipe. The small break LOCA calculations used to license the plant during previous fuel cycles are shown to be bounding with respect to the new fuel design. This demonstrates that the plant meets 10 CFR 50.46 criteria when the core is loaded with Mark-BW fuel.

* * * * *

Duke Power Company's Topical Reports DPC–NE–3000, DPC–NE–3001, and DPC–NE–2004 provide evaluations and analyses for non-LOCA transients which are applicable to Catawba. The scope of these analyses includes all events specified by sections 15.1–15.6 of Regulatory Guide 1.70 (Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants) and presented in the Final Safety Analysis Report for Catawba. The analysis and evaluations performed for these topicals confirm that operation of Catawba Nuclear Station for reload cycles with Mark-BW fuel will continue to be within the previously reviewed and licensed safety limits.

One of the primary objectives of the Mark-BW replacement fuel is compatibility with the resident Westinghouse fuel assemblies. The description of the Mark-BW fuel design and the thermal-hydraulics and the core physics performance evaluation demonstrate the similarity between the reload fuel and the resident fuel. The extensive testing and analysis summarized in BAW–10173P shows that the Mark-BW fuel design performs, from the standpoint of neutronics and thermal-hydraulics, within the bounds and limiting design criteria applied to the resident Westinghouse fuel for the Catawba plant safety analysis.

Each FSAR accident has been reviewed to determine the effects of Cycle 7 operation and to ensure that the radiological consequences of postulated accidents are within applicable regulatory guidelines, and do not adversely affect the health and safety of the public. The design basis LOCA evaluations assessed the radiological impact of differences between the Mark-BW fuel and Westinghouse OFA fuel fission product core inventories. Also, the dose calculation effects from non-LOCA transients reanalyzed by Duke Power were evaluated using Cycle 7 characteristics. The calculated radiological consequences are all within specified regulatory guidelines and contain significant levels of margin.

The analyses contained in the referenced Topical Reports indicate that the existing design criteria will continue to be met. Therefore, the enclosed TS changes will not increase the probability or consequences of an accident previously evaluated.

As stated in the above discussion, normal operational conditions and all fuel-related transients have been evaluated for the use of Mark-BW fuel at Catawba Nuclear Station. Testing and analysis was also completed to ensure that, from the standpoint of neutronics and thermal-hydraulics, the Mark-BW fuel would perform within the limiting design criteria. Because the Mark-BW fuel performs within the previously licensed safety limits, the possibility of a new or different accident from any previously evaluated is not created.

The reload-related changes to the TSs do not involve a significant reduction in the margin of safety. The calculations and evaluations documented in BAW–10174 show that Catawba will continue to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. The evaluation of non-LOCA transients documented in DPC–NE–3001 also confirms that Catawba will continue to operate within previously reviewed and licensed safety limits. Because of this, the TS changes to support the use of Mark-BW fuel will not involve a significant reduction in the margin of safety.

An administrative change is being made to TS Tables 2.2–1 (Reactor Trip System Instrumentation Trip Setpoints), and Table 3.3–4 (Engineered Safety Features Actuation System Instrumentation Trip Setpoints). Since these tables contain values that are not identical for each unit, a separate table will be provided for each unit. The pages will be labeled "Unit 1" or "Unit 2", and there will be an "A" in the page number for Unit 1 and a "B" in the page number for Unit 2. The TS Tables will be copied on white paper for Unit 1 and on yellow paper for Unit 2 to further distinguish applicability. Table 3.3–4 will also have references to the RTD bypass system deleted, since the RTD bypass system has been removed, and they no longer apply. These changes are administrative in nature, and are being made only to clarify the TS. Since they involve no change in requirements, they involve no significant hazards.

Removal of Total Allowance Z and Sensor Error * * *

The removal of the Total Allowance, Sensor error, and Z columns from Tables 2.2–1 and 3.3–4, along with the deletion of TS 2.2.1.b.1, 3.3.2.b.1, and equation 2.2–1, which provide for the use of these values, do not involve any significant hazards consideration. These specifications provide the option of declaring instrumentation operable when the setpoint is less conservative than the allowable value. This is done through the use of equation 2.2–1. With the deletion of Specifications 2.2.1.b.1, 3.3.2.b.1, equation 2.2–1, and the Total Allowance, Sensor Error, and Z columns from Tables 2.2–1 and 3.3–4 the channel must be declared inoperable with the setpoint less conservative than the Allowable Value. This change is more conservative than the current requirements, and therefore involves no significant hazards.

Deletion of Neutron Flux High Negative Rate Trip

The removal of the Power Range Neutron Flux High Negative Rate trip will not result in any previously-reviewed accident becoming more probable or more severe. The trip is a response to a pre-existing transient condition and would not initiate any accident. The trip is designed to provide protection from a dropped control rod. However, in the event of a dropped rod, the reactor is assumed to trip on low pressurizer pressure. Therefore, the protection function is retained. The consequences of a dropped rod have been analyzed and found to be within acceptable limits.

Likewise, the removal of this trip will not create a new accident not previously reviewed. The removal of a response to a transient will not initiate a new transient. There are no credible unanalyzed transients which will occur as a result of a dropped rod. The removal of this trip will reduce the potential for spurious or unnecessary trips which may occur as a result of maintenance or the drop of a low-worth rod. There are no other hardware modifications or procedure changes that will be made as a result of this deletion which could create the possibility of a new accident.

No margin of safety will be reduced by this change. As noted above, if a dropped rod necessitates a trip, the trip function will be accomplished as a result of low pressurizer pressure. For those dropped rods for which no trip is necessary, the removal of this trip will provide protection against an unnecessary transient.

Reduce Allowable Primary to Secondary Leakage

The allowable primary to secondary leakage has been reduced to limit the offsite radiological dose consequences due to the reanalysis of the locked rotor, rod ejection, and single uncontrolled rod withdrawal FSAR Chapter 15 events. The new limits are more conservative than the current TS requirements. Lowering the allowable primary to secondary leakage will not increase the probability of a previously evaluated accident, it will ensure that the dose consequences of an accident are within allowable limits. The possibility of a new or different accident from any previously evaluated is not created because there will be no physical changes to the plant operating procedures, other than to more conservatively limit leakage. There will not be a significant reduction in the margin of safety due to the fact that the allowable leakage is more conservative.

Based on the above, it is concluded that no significant hazards are associated with this change.

Increase in Operable RCS Loops in Mode 3 and Increase Cold Leg Accumulator Required Boron Concentration

These amendments will not involve any significant hazards consideration. The proposed changes will result in the parameter or operating condition involved becoming more conservative than the current TS requirement. The NRC's own guidance, published in the Federal Register (48 CFR 14870), states that an amendment which results in conditions becoming more restrictive is not likely to result in significant hazards consideration as defined by 10 CFR 50.92. Therefore, it may be concluded, with no further analysis, that these amendments will not involve a significant hazards consideration.

ECCS Pump Performance Requirements

The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Loss-of-Coolant-Accident (LOCA) analysis, to which the ECCS flowrates are input assumptions, is unchanged and, therefore, continues to meet applicable acceptance criteria.

The proposed amendments will not result in a significant increase in the possibility of a new accident because the new values represent a change in required pump performance. The new values represent no change in the assumptions made in the LOCA analysis, or any physical change in the plant. Enough margin exists between the flow used in the LOCA analysis and the new required pump flows that a reanalysis was not necessary.

[T]he proposed changes will not result in a significant decrease in a margin of safety, because pump performance at the new values is sufficient to meet all acceptance criteria in both the current FSAR analysis and any analysis associated with Catawba 1 Cycle 7.

Based on the above, it is concluded that no significant hazards exist.

Increase in Pressurizer Code Safety Valve Setpoint Tolerances

The proposed amendment will not result in a significant increase in the probability or consequences of any previously analyzed accident. The valve lift setting is challenged only after a transient has been initiated and is not a contributor to the probability of any transient or accident. The transients which involve pressure increases which would potentially challenge the safety valves have been analyzed to determine the consequences of delayed or premature valve actuation at the extremes of the new setpoint tolerances. These analyses show that all applicable acceptance criteria are met using the wider tolerances.

The proposed amendment will not result in the creation of any new accident not previously evaluated. As noted above, the setpoint tolerance only affects the time at which the safety valve opens following or during a transient, and is not a contributor to the probability of an accident.

The proposed amendment will not result in a significant decrease in a margin of safety. The limiting transient in each accident category has been analyzed to determine the effect of the change in lift setpoint tolerance on the transient. In each case, the results of the analyses met all acceptance criteria.

Based on the above, it is concluded that no significant hazards exist.

Low Steam Line Setpoint Pressure Change

Changing the Low Steam Line Pressure setpoint and removal of dynamic compensation will not increase the probability or consequences of any previously-reviewed accident. The higher steam line pressure setpoint is consistent with all licensing basis safety analyses. This change, in conjunction with the removal of the dynamic compensation of the steam pressure signal, is intended to reduce or eliminate spurious Engineered Safeguards Features (ESF) actuations which are caused by minor (but rapid) pressure decreases in the secondary system.

The proposed amendment will not result in a new accident not previously reviewed. A change in steam line pressure is a response to an existing transient condition, rather than a precursor or initiating event. A change in the steam line pressure setpoint is also not a precursor or initiating event.

The proposed amendment will not result in a significant decrease in a margin of safety. The reanalysis of the steam line break accident which was performed shows that all imposed Condition II acceptance criteria are met.

Based on the above, it is concluded that no significant hazards exist.

Feedwater and Main Steam Line Isolation Valve Stroke Time

The proposed changes to the valve stroke times in Tables 3.3–5 and Table 3.6–2a will not significantly increase the probability or consequences of any

previously evaluated accident. The effects of the delays in isolation times on the various transients affected have been analyzed and found to be acceptable. Since these valves do not receive a containment isolation signal, and no credit is taken for operation of these valves in the dose analysis for a containment isolation function, a maximum stroke time does not apply for containment isolation.

The proposed changes will not significantly increase the possibility of a new accident not previously evaluated. Feedwater and main steam isolation are responses to ongoing transients, rather than initiators or precursors of transients. No equipment or component reconfiguration will occur as a result of this change.

The proposed changes will not significantly decrease any margin of safety. As noted above, the effects of the longer isolation times have been evaluated and found to be acceptable.

Based on the above, it is concluded that no significant hazards exist.

Revise List of Accidents Requiring Reevaluation in the Event of an Inoperable RCCA

The proposed change to Table 3.3–1 will not change the probability or consequences of any accident or reduce any safety margin, because the table simply lists accident analyses which must be reevaluated in the event of an inoperable rod cluster control assembly (RCCA). The activities involved are analytical only, and do not introduce any operational considerations. Revision of the table to more accurately define the affected analyses is an administrative effort related to activities (analyses) which are conducted offsite after the fact of a postulated inoperable RCCA.

Based on the above, it is concluded that no significant hazards exist

* * * * *

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The licensee has also proposed changes to TS 6.9.1.9 to update the listing of previously approved topical reports which describe the analytical methods used to determine the core operating limits. This updating is an administrative change that provides consistency between the list and the changes made as discussed above in the prior sections of the TS. Accordingly, the updating of this list to reflect the titles of the reports describing the underlying methodology for the changes discussed above does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated, and does not involve a significant reduction in a margin of safety. On this basis the staff proposes to find that this change does not involve a significant hazards consideration. The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 20, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a

supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 13, 1992, as supplemented July 8, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 14th day of July 1992.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Acting Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–17147 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

[Docket No. 40–8027]

Amendment Receipt and Opportunity for a Hearing; License No. SUB–1010; Sequoyah Fuels Corporation, Gore, OK

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB–1010 to revise the groundwater monitoring program for Sequoyah Fuels Corporation (SFC) located in Gore, Oklahoma.

Proposed Action: By amendment request dated April 1, 1992, SFC requested a license amendment to implement the SFC Groundwater Monitoring Plan (GMP) dated March 31, 1992. The GMP describes the groundwater monitoring program for SFC. The above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are: 1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 14th day of July 1992.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92-17148 Filed 7-20-92; 12:01 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25582; International Series Release No. 423]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 16, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 4, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, Inc., et al. (70-8032)

Dominion Resources, Inc. ("Dominion"), a Virginia public utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, Dominion Energy, Inc. ("Dominion Energy"), its wholly owned nonutility subsidiary company and Dominion Generating S.A. ("DGSA"), a wholly owned Argentine subsidiary company of Dominion Energy, all of P.O. Box 26532, 901 East Byrd Street, Richmond, Virginia 23261-6532, have filed an application in connection with the proposed acquisition of an interest in an Argentine electric public-utility company, Central Termica Guemes S.A. ("Guemes"). The applicants request an order under section 3(b) of the Act granting unqualified exemptions from all provisions of the Act for Dominion Management Argentina S.A. ("DMASA"), a to-be-formed, wholly owned Argentine subsidiary of Dominion Energy, and Guemes. Alternatively, the applicants request an order approving the proposed acquisition of interests in Guemes and DMASA under sections 9(a)(2) and 10, and, upon consummation of the transactions, granting exemptions under section 3(a)(5) from all provisions of the Act, except section 9(a)(2), to Dominion Energy and DGSA.

Dominion, through its wholly owned public-utility subsidiary company Virginia Electric and Power Company, is engaged in the generation, transmission, distribution and sale of electric power in Virginia and northeastern North Carolina. Dominion's electric revenues during 1991 were approximately $3.69 billion.

Guemes, a government-owned Argentina corporation, owns a 245 MW thermal electric generating station. As part of its privatization program, the Argentine government is seeking bidders for up to a 60% voting equity interest in Guemes.[1]

Dominion will seek to acquire up to a 60% voting equity interest in Guemes through DGSA. Dominion also intends to form DMASA to manage and operate the Guemes generating station. DMASA, as operator, will depend primarily on locally hired employees. The applicants do not anticipate that more than ten senior Dominion Energy United States personnel will be assigned to Guemes in Argentina. Other than such personnel transfer and the financial commitment described below, there will be no business transactions or financial commitments between Guemes and Dominion or any of Dominion's other subsidiaries.

Though the price for the 60% equity interest in Guemes has not yet been determined, the application states that Dominion and its subsidiary companies will not invest more than $500 million inclusive of any guarantees or other financial commitments that may be provided, as well as certain construction obligations.[2] Dominion will finance its indirect investment in Guemes from existing working capital, short-term borrowing or cash flow from operations.[3] Revenues, including operating fees, and net income which Dominion expects from its Guemes interest are expected to be less than 5% of the utility revenues and net income of Dominion as a whole. Five percent of Dominion's 1991 utility revenues is approximately $189 million and 5% of Dominion's 1991 net income is approximately $23 million.

Guemes will be an "electric utility company" as defined in section 2(a)(3). As a result, Dominion, Dominion Energy and DGSA will each be a "holding company" within the meaning of section 2(a)(7) with respect to Guemes, and Guemes will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8). DMASA will also be an "electric utility company" within the meaning of section 2(a)(3) because it will operate Guemes.

The applicants request orders of exemption under section 3(b) for Guemes and DMASA. The application states that neither DMASA nor Guemes will derive any material part of its income, directly or indirectly, from sources within the United States, and neither will operate, or have any subsidiary company that operates, as a public-utility company in the United States. The application also states that, if unqualified exemptions are granted, Dominion Energy and DGSA will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and Dominion, Dominion Energy and DGSA will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which they would otherwise be subject. Dominion states that it will continue to qualify as an exempt holding company under section 3(a)(1) following the acquisition.

If unqualified orders of exemption are not granted, the applicants request authorization under sections 9(a)(2) and 10 to organize and acquire DMASA and to acquire an interest in Guemes. The applicants also request orders under section 3(a)(5) exempting Dominion

[1] The Argentine government will retain 30% of the voting securities of Guemes, and the remaining 10% of the securities will be sold to the employees of Guemes pursuant to an employee stock ownership plan.

[2] Included in the commitment is the winning bidder's responsibility to construct an 85 mile, 132 KV transmission line that will be owned and operated by the Argentine government.

[3] Dominion also seeks to invest in Central Termica Alto Valle S.A., another Argentine generating station. See *Dominion Resources, Inc.*, Holding Co. Act Release No. 25558 (June 22, 1992). Dominion states that its investments and commitments in connection with foreign projects will not exceed an aggregate amount of $500 million.

Energy and DGSA from all provisions of the Act, except section 9(a)(2). The application states that neither Dominion Energy nor DGSA is engaged in the business of a public-utility company in the United States, or will derive a material part of its income, directly or indirectly, from any one or more subsidiary companies which are a company or companies the principal business of which within the United States is that of a public-utility company.

The applicants will inform the appropriate state regulators of the proposed transactions and will request a letter from them stating that the proposed transactions do not require their approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17217 Filed 7-17-92; 12:01 pm]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority areas for Commission study; Request for public comment.

SUMMARY: The Commission is continuing its ongoing analysis of the implementation of the sentencing guidelines and has identified the following priority topical issues upon which it intends to focus its attention during the coming year: (1) "White collar"/economic offenses; (2) money laundering offenses; (3) violent crimes against the person and firearms offenses, including gang-related activity; (4) drug trafficking offenses, including the interaction among the drug trafficking guideline, role in the offense guidelines, and mandatory minimum statutes; and (5) environmental offenses, including fine guidelines for organizations convicted of such offenses. Comment is requested in respect to these specific issues identified by the Commission in preparation for the 1993 amendment cycle that culminates in the submission to Congress of proposed guideline amendments no later than May 1, 1993. While the Commission welcomes comment on any aspect of guideline application or any other matter within the Commission's authority, it suggests that interested persons focus their comments and recommendations on these identified priority areas.

DATES: Public comment for this information-gathering phase of the 1993 amendment cycle should be received by the Commission as soon as practicable but no later than September 15, 1992, in order for it to be most usefully considered by the Commission in shaping its work during the 1993 amendment cycle.

ADDRESSES: Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Ave., NW., suite 1400, Washington, DC 20004. Attn: Public Information Specialist.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, telephone: (202) 626-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission is beginning the process that may result in amendments submitted to Congress in 1993 by soliciting formal and informal comment in respect to certain priority areas upon which the Commission expects to concentrate its attention during the coming year. This notice is designed to provide interested persons with an early opportunity to inform the Commission of legal, operational, or policy concerns relating to guidelines within the identified priority areas, as well as to suggest specific solutions and alternative approaches. In late 1992 or early 1993, the Commission will publish in the Federal Register a formal notice of proposed amendments and amendment issues and invite comment on those proposals.

The Commission has listed the following as priorities for study and/or possible amendment action in the 1993 amendment cycle:

(1) "White collar" offenses generally (including, but not limited to, tax offenses, fraud, embezzlement and theft), with an emphasis on the "loss" tables in the guidelines for these various economic offenses and the enhancement for "more than minimal planning";

(2) Money laundering offenses;

(3) Violent offenses covered under Chapter Two, Part A of the *Guidelines Manual* and firearms offenses, including gang-related activity;

(4) Drug trafficking offenses, focusing on the relationship between mandatory penalties in the drug statutes and the guidelines, including the adjustment for role in the offense; and

(5) Environmental offenses, especially with respect to fine guidelines for organizational defendants.

In addition to the aforementioned areas slated for priority attention during the coming year, the Commission has identified a second list of priority areas on which work will begin late this year, but on which final reports are expected in the 1994 amendment cycle. Among the topics slated for examination on this "two-year" schedule are:

(1) Departures below the guideline range based upon defendants' substantial assistance in the investigation of other crimes;

(2) A comprehensive examination of other bases for departure from the guidelines, including the departure jurisprudence of the appellate courts;

(3) Computer fraud offenses, to the extent not addressed within the aforementioned study of white collar offenses,

(4) Public corruption offenses;

(5) Food and drug offenses, including the development of fine guidelines for organizations committing these offenses;

(6) Juvenile offenses;

(7) Review of the probation and supervised release revocation policy statements;

(8) Criminal history; and

(9) Comprehensive review of Sentencing Reform Act statutory provisions.

The Commission also has established a project group to address a number of issues relating to prison administration and prison sentence implementation mentioned in various provisions of the Sentencing Reform Act.

As in past amendment cycles, the Commission generally intends to utilize interdisciplinary staff working groups, consisting of representatives from its legal, research, and training/technical assistance units to address designated priority issues. The Commission staff working groups, in turn, will be drawing upon the expertise of other individuals and groups in the criminal justice system to aid their work. The working groups' objectives will be to comprehensively examine topical areas and report to the Commission needs for training emphasis, additional research, legislative action, guideline amendments, or other action as appropriate.

The Commission welcomes comment in respect to the aforementioned identified priorities, as well as any other aspect of guideline application or the implementation of the Sentencing Reform Act.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 92–17078 Filed 7–20–92; 8:45 am]

BILLING CODE 2210–40–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 29761.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., Thursday, July 30, 1992.

CHANGES IN THE AGENDA: the Commodity Futures Trading Commission has added to the agenda an Application of the MidAmerica Commodity Exchange for contract designation in Three-Month Eurodollar Time Deposit futures.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92–17321 Filed 7–17–92; 2:49 pm]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, July 27, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 17, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17261 Filed 7–17–92; 2:14 pm]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, July 28, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Pilot Program—Community Development Credit Unions.
4. Proposed Rule: Amendment to Part 741, NCUA's Rules and Regulations,, Requirements for Insurance.
5. Proposed Revision to the Operating Fee Scale for Federal Credit Unions.
6. Public Comment on Reduction of Regulatory Burden.

RECESS: 10:30 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, July 28, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Requests for Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. NCUA's Budget FY 93 and FY 94. Closed pursuant to exemptions (2) and (9)(B).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–7267 Filed 7–17–92; 2:15 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 20, 27, August 3, and 10, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 20

Monday, July 20

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 27—Tentative

Wednesday, July 29

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301–492–4665)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)
3:00 p.m.
Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

Friday, July 31

10:00 a.m.
Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301–504–3417)

Week of August 3—Tentative

Tuesday, August 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 10—Tentative

Wednesday, August 12

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this Date.

To verify the status of meeting call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: July 17, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–17306 Filed 7–17–92; 2:16 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
July 21, 1992

Part II

Environmental Protection Agency

40 CFR Part 70
Operating Permit Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL-4152-9]

RIN 2060-AD16

Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating a new part 70 of chapter I of title 40 of the Code of Federal Regulations (CFR).

Title V of the Clean Air Act (Act) Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, requires EPA to promulgate regulations within 12 months of enactment that require and specify the minimum elements of State operating permit programs. This new part 70 contains these provisions. It requires States to develop, and to submit to EPA, programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emissions standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program.

Title V establishes timeframes for developing and implementing the State permit programs. Within 3 years of enactment (i.e., no later than November 15, 1993), States must submit proposed permit programs to EPA for approval. The EPA must act to approve or disapprove a State program within 1 year of submittal by the State to EPA. In some cases, EPA can grant programs an interim approval for a period of up to 2 years. If a State fails to submit a fully-approvable program within the 3-year period (or by the end of the interim approval period), EPA will apply specific sanctions pursuant to the provisions of title V and, in any event, must establish a Federal program 2 years after the end of the 3-year program submittal period. Sources subject to the part 70 program must submit complete permit applications within 1 year after a State program is approved by EPA (including an interim approval) or, where the State program is not approved, within 1 year after a program is promulgated by EPA. In the case of new sources, complete permit applications would generally be due 12 months after the source commences operation, unless the permitting authority sets an earlier deadline.

Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP) or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the Act (e.g., NSPS). Sources must also submit periodic reports to the State and EPA, as appropriate, concerning the extent of their compliance with permit obligations. The permit, permit application, and compliance reports will be available to the public, subject to any applicable confidentiality protection procedures similar to those contained in section 114(c).

In the proposal, EPA discussed issues connected with the regulations that will govern EPA's issuance of title V permits. The EPA will address these issues further when the Agency proposes Federal regulations.

DATES: The regulatory amendments announced herein take effect on July 21, 1992. This promulgation, however, does not affect the date by which States are to submit full permit programs to EPA for approval. The submittal deadline is set by section 502(d)(1) as 3 years after enactment of the Act Amendments of 1990. The deadline for full program submittal, therefore, is set by the Act as November 15, 1993. A slight variation to this rule can occur if EPA grants a program interim approval. An interim approval will be accompanied by a list of revisions or modifications necessary for the program to be fully approved. The State will then have until 6 months prior to the end of the interim approval to submit the program corrections, even though the November 15, 1993 date may have passed.

ADDRESSES:

Docket

Supporting information used in developing the proposed and final rules is contained in Docket No. A-90-33. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA Air Docket is: Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Trutna (telephone 919/541-5345) or Kirt Cox (telephone 919/541-5399), Mail Drop 15, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are in the following format:

This preamble is organized to meet the needs of readers who want just an overview of the operating permit program and for readers who want a detailed discussion of the changes made to the proposed regulations to result in today's final rulemaking.

The first section provides background on the amendments to the Act establishing an operating permit program, the purposes of that action, and the expected benefits. The information is useful to anyone seeking any level of information on the operating permit program.

The second section mentions the principles EPA has followed while developing the regulations. These implementation principles and the positions on associated issues were discussed in detail in the May 10, 1991, preamble.

Section III of the preamble provides a summary of the requirements of the regulations being promulgated today.

A discussion of the regulatory changes from the proposed requirements is in section IV. In the preamble of the May 10, 1991, proposal, EPA explained the basis for its various proposed positions. Where the proposed regulations have not been changed in the final rules, EPA continues for the most part to rely on the rationale provided in the proposal notice. Where the regulations have changed in more than a minor way, this preamble states

the basis and purpose for the final regulations, including the reasons for the change. A separate document providing more detailed responses to comments on the proposal will be placed in the docket. The design of section IV follows the flow of the final part 70 regulations.

The final section (section V) contains the administrative requirements accompanying Federal regulatory actions. These include the topics listed in the preamble outline above.

The preamble includes many citations (e.g., § 70.6) to refer the reader to more detail or to the origin of certain requirements. These citation sections will not be followed by their origin such as "of this preamble" or "of title V." Rather, the reader can recognize the origins of the sections by their nature:

A. Sections of the preamble begin with a Roman numeral.

B. Sections of title V of the Act are in the 500's.

C. Sections of the proposed regulations range from 70.1 to 70.11.

D. Sections of the Act are referenced by a three-digit number, such as 112 and 408.

E. Sections of existing EPA regulations generally are preceded by "40 CFR."

This preamble makes frequent use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority. The reader should assume that use of "State" also applies, as defined in section 302(d), to the District of Columbia and territories of the United States, and may also include reference to a local air pollution agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the title V permitting program. In some cases, the term "permitting authority" is used and can refer to both State and local agencies when the local agency directly issues permits or assists the State in issuing permits. The term "permitting authority" may also apply to EPA where the Agency is the permitting authority of record.

I. Background and Purpose

Title V was added to the Act on November 15, 1990, and introduces an operating permit program. It requires that EPA, within 12 months of enactment, promulgate regulations setting forth provisions under which States will develop operating permit programs and submit them to EPA for approval. The EPA proposed these regulations to be codified in a new part 70 of chapter I of title 40 of the CFR on May 10, 1991 [56 FR 21712]. The comment period for that action ended on July 9, 1991. Approximately 500 public comments were received on the proposal during the comment period. Copies of these comments appear in the docket for this action listed above under *Docket*. The following four public hearings were held on the proposal: June 4 and 5, 1991, in Washington, DC; June 6, 1991, in Chicago, Illinois; June 24, 1991, in San Francisco, California; and July 1, 1991, in Dallas, Texas.

The significant changes to the regulations resulting from public comments are contained in this preamble. A summary of all public comments, transcripts of the public hearings, and the response of EPA to all the significant comments are contained in a technical support document.

Sources subject to the permitting requirements of part 70 (part 70 sources) must obtain an operating permit; States must develop and implement the program; and EPA, after promulgating today's permit program regulations, must review each State's proposed program and oversee the State's efforts to implement any approved program, including reviewing proposed permits and vetoing improper permits. When a State fails to adopt and implement its own approvable program, EPA must apply sanctions against the State or the relevant jurisdiction and ultimately also develop and implement a Federal permit program.

The addition of such a permitting program makes the Act more consistent with other environmental statutes, including the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA), both of which have permit requirements. The part 70 regulations have been designed to minimize the disruption to current State efforts by offering as much flexibility as is provided by the law. The program can also help implement market-based control strategies using improved monitoring and emissions tracking.

While title V generally does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act (ranging from emissions limits to monitoring, recordkeeping, and reporting requirements) are, in many cases, scattered among numerous provisions of the SIP or Federal regulations. In addition, regulations are often written to cover broad source categories, therefore, it may be unclear which, and how, general regulations apply to a source. As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

The title V permit program will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result. The program will also greatly strengthen EPA's ability to implement the Act and enhance air quality planning and control, in part, by providing the basis for better emission inventories.

Another benefit of the title V permit program is that it provides a ready vehicle for the States to administer significant parts of the substantially-revised Federal air toxics program and the new acid rain program. This enhances EPA's ability to oversee all programs under the Act. Specifically, the Act requires that States use the permit system to administer the air toxics program. In addition, States will be responsible for reviewing and issuing permits to implement the second phase of the acid rain program (with permitting activities beginning in 1996) and will play a significant role in ensuring compliance with the acid rain regulations promulgated under title IV of the Act.

Finally, an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay the cost of developing and implementing the permit program. To the extent the fees are based on actual emission levels, the fees will create an incentive for sources to reduce emissions.

The EPA expects that this rule will promote several objectives which the Agency believes are essential to the long term success of environmental programs: market-based programs, coordination of control programs across media, and pollution prevention.

Market-Based Programs: The EPA is committed to using market-based principles to achieve the greatest level of environmental protection at the least cost. The title V operating permit program will lay the critical foundation for pursuing market-based programs under the Clean Air Act beyond the acid rain program under title IV, which

already provides for marketable emission allowances within an operating permit system. Before the permit program, there was no ready vehicle for quantifying and accounting for Federal air pollution control requirements at a particular facility. With a title V permit, those control requirements can be quantified by a facility, the first step in establishing the currency necessary for a market-based system. Moreover, title V permits will establish monitoring and compliance requirements which are essential to make a market system accountable.

Cross-Media Coordination: Of the major regulatory statutes EPA implements, the Act alone did not have a permit program as the basic vehicle for applying source-specific control requirements at regulated facilities. As a result, EPA could not readily include air pollution requirements in its efforts to coordinate control requirements across media. Now that EPA has available to it permits which reflect the requirements under the CWA, RCRA, and the Act, it will be easier to coordinate those programs in the future.

Part of the cross-media coordination EPA hopes to achieve using title V permits is a comparison of the relative impact of control requirements across media and risk-based analysis of the impact of pollution control requirements. Clearly, EPA must faithfully implement the requirements in each of its regulatory programs, but EPA hopes increasingly to balance control requirements across media according to risk-based analyses to the extent the relevant statutes provide EPA with flexibility. In the future, such comparisons across media will provide the information critical to an ongoing evaluation of EPA's regulatory programs, and may provide the basis for transforming the more media-specific structure of the Agency's programs into a more unified program that addresses the greatest risk first.

Pollution Prevention: Title V permits will also lead air pollution sources and regulatory agencies to evaluate their air pollution control strategies, both on a source-specific basis and across the regulatory program. Implementing title V presents an opportunity to pursue strategies that avoid pollution, rather than control it, and that eliminate pollution, rather than shift it from one medium to the other. Indeed, a cross-media analysis should highlight opportunities to avoid pollution shifting.

II. Implementation Principles

The passage of the Act amendments of 1990 was a major accomplishment in the protection of public health and the environment in the United States. The Act sets forth ambitious goals which can only be achieved through effective and expeditious implementation by EPA and State and local governments. Today's rulemaking is one of the first of several important actions that EPA will be taking to accomplish its rule development responsibilities under the Act. The EPA in designing its May 10, 1991 proposal identified several principles to guide the design and implementation of title V regulations and related programs. These principles, which were discussed extensively in the proposal, were thought to be necessary to preserve the legislative intent underlying the content of title V. The EPA intends that these principles be appropriately incorporated into all aspects of program development and implementation by both States and EPA. In particular, EPA will employ them when it is responsible for developing rules, overseeing State or local agency programs and permits, or issuing permits.

II. Summary of Final Rules

A. Applicability

The title V operating permits program requires all part 70 sources to submit permit applications to the appropriate permitting authority within 1 year of the effective date (i.e., date of EPA approval) of the State program. The operating permit program applies to the following sources:

1. Major sources, defined as follows:

(a) Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant listed pursuant to 112(b); 25 tpy, or more, of any combination of hazardous air pollutants listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies [501(2)(A)].

(b) Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant [501(2)(B)].

(c) Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following, or greater, amounts [501(2)(B)]:

	TPY
(i) Ozone (VOC and NOx):[1]	
Serious	50
Transport regions not severe or extreme	50
Severe	25
Extreme	10
(ii) Carbon monoxide—serious (where stationary sources contribute significantly)	50
(iii) Particulate matter (PM-10)—serious	70

[1] For this purpose, title I treats volatile organic compounds (VOC) and oxides of nitrogen (NOx) sources somewhat differently. In areas qualifying for an exemption under section 182(f), NOx sources with the potential to emit less than 100 tpy would not be considered major sources under part D of title I. In areas not qualifying for this exemption, NOx sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section section 184(b). Because section 182(f) does not refer to 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NOx sources. Whatever its location, any 100 tpy source would be considered a major source under section 302.

[2] VOC only.

2. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

3. Any source subject to NSPS under section 111.

4. Affected sources under the acid rain provisions of title IV [501(1)].

5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area, new source review (NSR) program under title I, part D.

6. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area in the same major group, two-digit, industrial classification). Once subject to the part 70 operating permit program for one pollutant, a major source must submit a permit application including all emissions of all regulated air pollutants from all emissions units located at the plant, except that only a generalized list needs to be included for insignificant events or emissions levels. The program (including combinations of partial programs) applies to all geographic areas within each State, regardless of their attainment status. The acid rain permit program requirements, however, apply only within the contiguous 48 States and the District of Columbia.

The EPA is authorized, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit if the Agency determines that compliance with the part 70 regulations would be "impracticable, infeasible, or unnecessarily burdensome" [section 502(a)]. The EPA may not, however, exempt any major source or affected (i.e., acid rain) source. The EPA believes

that compliance by nonmajor sources with the permitting requirements during the early stages of the program would prove to be unnecessarily burdensome for nonmajor sources and impracticable and infeasible for permitting authorities as well. Therefore, to promote an orderly phase-in of the program, States can defer coverage temporarily for all sources which are not major. The EPA will complete a rulemaking to consider further deferral or permanent exemption for non-major sources within 5 years of the date EPA first approves a State program that defers such sources.

Any source whose obligation to obtain a permit is deferred may request a permit prior to the end of the 5-year deferral period. All deferred sources will be required to submit permit applications within 12 months after the completion of the future rulemaking, unless they are sources or source categories that receive a continued exemption (i.e., EPA determines that compliance with the permitting requirements for such categories would be impracticable, infeasible, or unnecessarily burdensome on the source categories) in the future rulemaking.

In addition, States may permanently exempt from review those nonmajor sources and source categories subject to title V solely because they are subject to the NSPS for new residential wood heaters or the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos from demolition and renovation activities. The Administrator reserves the right to grant deferral or exemption to additional nonmajor source categories when they become subject to section 112, and thereby subject to title V.

B. State Permit Program Submittals and Transition

Title V requires EPA to promulgate regulations establishing the minimum elements of a State permit program. State and local pollution control agencies or interstate compacts may implement provisions of title V, as long as all geographic areas within each State are covered by a permit program. As previously discussed, reference to the "State" will include reference to local agencies, where appropriate, which would allow granting of a partial program for a specific geographic area within a State. The EPA oversees development of State programs and enforces the obligation to implement a program in each State. Should a State fail to develop a permit program, the EPA must implement a program for that State [501(4), 502(d)(1), and 302(b)].

1. Minimum Program Requirements

As required by title V, today's regulations establish the minimum elements of a State operating permit program, including the following:

(a) Requirements for permit applications, including standard application forms and criteria for determining the completeness of applications [502(b)(1)].

(b) Monitoring and reporting requirements [502(b)(2)].

(c) A permit fee system [502(b)(3)].

(d) Provisions for adequate personnel and funding to administer the program [502(b)(4)].

(e) Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act [502(b)(5)(A)].

(f) Authority to terminate, modify, or revoke and reissue permits "for cause" [502(b)(5)(D)].

(g) Authority to enforce permits, permit fee requirements, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day for each violation, and "appropriate criminal penalties" [502(b)(5)(E)].

(h) Authority to assure that no permit will be issued if EPA timely objects to its issuance [502(b)(5)(F)].

(i) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete and for processing applications; for public notice, including offering an opportunity for public participation, where applicable; for expeditious review of permit actions; and for State court review of the final permit action [502(b)(6)].

(j) Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (section 503 and the deadlines for permitting under acid rain provisions in title IV) shall be treated as a final permit action solely to allow judicial review by the applicant, anyone else who participated in the public review process, and any other person who could obtain judicial review of such action under applicable law, to compel action on the application [502(b)(7)].

(k) Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions similar to those of section 114(c) of the Act [502(b)(8)]; the contents of the permit itself are not entitled to confidentiality protection [503(e)].

(l) Provisions to allow operational flexibility at the permitted facility [502(b)(10)].

(m) Provisions required if a State allows sources to make certain changes that are not prohibited or addressed by the permit [502(a)].

(n) Provisions to require that part 70 permits include terms and conditions addressing alternative scenarios at the permitted facility and emissions trading provided for in the underlying applicable requirement [502(b)(6)].

2. State Program Development

Within 3 years of enactment, the Governor of each State shall submit to EPA a permit program meeting the requirements of title V. A State may submit its current or proposed program to EPA for approval. The Governor must also submit a legal opinion from the attorney general, attorney for those State air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out the program [502(d)(1)]. The EPA encourages prompt action by each State to evaluate the potential of its existing enabling legislation to implement title V and to take additional actions, as needed, to ensure a timely and approvable program submittal.

Several States may need new legislative authority in a number of areas in order to fulfill the requirements of the Act, including (but not limited to): Authority to charge, collect, retain, and spend adequate permit fees, and to collect civil penalties of a maximum amount of at least $10,000 per day per violation. The EPA intends to assist States in identifying and obtaining any required new authorities.

3. The EPA Review of Program Submittals

Within 1 year after receiving the State's program, EPA shall approve or disapprove it, in whole or in part. The EPA may approve the program to the extent it meets the requirements of the Act and today's regulations.

If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The State then has 180 days from this notice to revise and resubmit the program [502(d)(1)]. When EPA approves a program, EPA must suspend issuance of Federal permits, but may retain jurisdiction over permits still under administrative or judicial review [502(e)].

4. Interim Program Approvals

If a program is not fully-approvable, EPA may grant interim approval to a permit program, so long as the program "substantially meets" the requirements of title V. Criteria for satisfying the "substantially meets" test include:

(a) The commitment and capability to collect fees adequate to cover the costs of the interim permitting program and the development as appropriate of the whole program;

(b) The legal authority to assure that sources subject to the interim program comply with all applicable requirements of titles I, IV, and V under the Act;

(c) Fixed permit terms not to exceed 5 years;

(d) The opportunity for public participation in appropriate permit proceedings;

(e) The opportunity for EPA to review and object to the issuance, modification, or renewal of any permit and for affected States to review such permits consistent with section 505 of the Act;

(f) The requirement that a proposed permit will not be issued if EPA objects to its issuance;

(g) Adequate procedures for enforcing permits, including penalties;

(h) Provisions for allowing operational flexibility and alternative scenarios for sources, consistent with §§ 70.4(b)(12) and 70.6(a)(9);

(i) Streamlined procedures for issuing and revising permits and determining when applications are complete; and

(j) Application and reporting forms to be used in implementing the interim program.

In the notice of final rulemaking granting interim approval, EPA must specify the changes the State must make to receive full approval. The EPA may grant interim approval, which may not be renewed, for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permit program in the State [502 (d) (2)–(3) and (g)]. Permits issued under a program with interim approval have full standing with respect to title V, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications discussed in the following section.

5. State Permit Review

As noted above [III.B.(4)], subject sources are required to submit permit applications to the permitting authority within 1 year of program approval, whether full, partial, or interim. For title IV (acid rain) sources, however, specific superseding deadlines are provided for the submission of Phase II permit applications, which will not be due to States until January 1, 1996 [408(D)(2)]. For the initial round of permit applications, the permitting authority must establish a phased schedule for processing permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed 3 years after approval (interim or full) of the program [503(c)]. The EPA urges States to encourage early submittals of complete applications.

States are required to issue permits under the acid rain program by December 31, 1997 [408(D)(3)]. For most States, this deadline will coincide roughly with the second year of permit program implementation. Additionally, expedited review and issuance procedures may be required for permit applications for sources pursuing compliance extensions for early reductions of hazardous air pollutants under section 112(i)(5).

After acting on the initial round of applications, the permitting authority must from then on act on a completed application (i.e., issue or deny a permit) within 18 months after receiving the complete application. The permitting authority must establish reasonable procedures to prioritize review of permit applications, especially in the case of applications for new construction or modifications as defined in title I [503(c)].

C. Complete Permit Application

Each State program must establish specific criteria to be used in defining a complete permit application. A complete application is one that the permitting authority has determined to contain all the necessary information needed to begin processing the permit application. The permitting authority can determine, however, that the application becomes incomplete if the source fails to provide timely updates to the application that the permitting authority needs to issue the permit within the specified deadlines.

The permitting authority must provide notice to the source of completeness determinations. In the event that no notice is provided to the source within 60 days after receipt of the application by the permitting authority, the application shall be deemed complete.

A source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided this delay was not due to the applicant's failure to respond in a reasonable and timely manner to written requests from the permitting authority for additional information needed to evaluate the application. This protection also applies with respect to title V to sources requiring both new title V and certain NSR permits. These sources must have a preconstruction permit consistent with the requirements of parts C and D of title I, and must have filed a complete application for a title V operating permit within 12 months of commencing operation, unless some earlier date is required by the permitting authority. In general, a complete application must be submitted according to the transition schedule approved within the part 70 program and in a timely way for subsequent renewals. "Timely" for renewals means 6 months prior to expiration of the permit, unless some greater time is needed (not to exceed 18 months) to ensure that the terms of the permit do not lapse before they are revised or renewed.

All complete applications must contain information which identifies a source, its applicable air pollution control requirements, the current compliance status of the source, the source's intended operating regime and emissions levels, and must be certified as to their truth, accuracy, and completeness by a responsible official after making reasonable inquiry. Each permit application must, at a minimum, include a completed standard application form (or forms) and a compliance plan. The permitting authority can, however, allow the application to cross-reference relevant materials where they are current and clear with respect to information required in the permit application. Such might be the case where a source is seeking to update its title V permit based on the same information used to obtain an NSR permit or where a source is seeking renewal of its title V permit and no change in source operation or in the applicable requirements has occurred. Any cross-referenced documents must be included in the title V application that is sent to EPA and that is made available as part of the public docket on the permit action.

The compliance plan describes how the source plans to comply or achieve compliance with all applicable air quality requirements under the Act. The exact contents and detail required in the compliance plan depend on the compliance status of the source with respect to each applicable requirement. This plan must include a schedule of

compliance and a schedule for the source to submit progress reports to the permitting authority no less frequently than every 6 months where applicable. Each source must submit a compliance certification report at least once a year in which it certifies its status with respect to each requirement, and the method used to determine the status. Specific requirements for acid rain affected sources regarding compliance schedules, progress reports, and compliance certifications will be contained in regulations promulgated under title IV of the Act.

The minimum data elements required in all standard application forms, as well as the basic requirements for compliance plans and compliance certifications, are presented in § 70.5 of the regulations. With exception of certain Federal programs (e.g., acid rain), EPA will not specify that any particular form be used by States as long as the minimum data elements are provided to EPA. However, the Agency will encourage the use of certain model forms as a preferred way to meet the requirements of § 70.5.

Additional information may be required from some subject sources. For example, those located in nonattainment areas under part D of title I may be required to fulfill the emissions statement requirements for certain sources of VOC and NO_x. Similarly, sources of hazardous air pollutants subject to section 112 which are attempting to comply with alternative emissions limits will also need to submit additional information.

D. Permit Content

The State program is required in § 70.6 to assure that permits meet all applicable requirements of the Act and include the following:

1. A fixed term, not to exceed 5 years [502(b)(5)(B)], except that affected sources under title IV must have 5-year fixed terms [408(a)] and solid waste incinerators under section 129(e) may have up to a 12-year fixed term.

2. Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable implementation plan [504(a)] and title IV.

3. A schedule of compliance (where applicable), which is defined as a schedule of remedial measures [504(a) and 501(3)].

4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations that EPA promulgates under sections 504(b), 114, and 504(c). Nothing in this regulation should be read to require continuous emissions monitoring in situations where it is not otherwise prescribed.

5. A provision describing conditions under which any permit for a major source with a term of 3 or more years must be reopened to incorporate any new standard or regulation promulgated under the Act [502(b)(9)].

6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

7. Provisions ensuring operational flexibility within a permit so that certain changes can be made within a permitted facility without a permit revision, provided that the change is not a "modification" (as defined in title I of the Act), that it does not exceed the emissions allowed under the permit or under any applicable requirement, and that a notice is provided to the permitting authority at least 7 days in advance where the permit would not allow such changes [502(b)(10)]. The operational flexibility provision contained in title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements of the Act.

8. A provision that nothing in the permit or compliance plan issued pursuant to title V of the Act shall be construed as affecting allowances under the acid rain program [408(b)].

9. A provision ensuring that all alternative operating scenarios identified by the source are included in the permit [502(b)(6)].

All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act. Consistent with EPA's discretion under the Act, the final rules require the permitting authority to identify those provisions in the permit which are not required under the Act or under any of its applicable requirements (i.e., State origin only) as not being federally enforceable. Like all other permit terms, a term which the permitting authority fails to designate as not federally enforceable will not be subject to challenge after 90 days.

Section 504(f) of the Act defines the permit shield provision of title V, which enables States to provide sources with greater certainty as to their legal obligations under the Act. This section authorizes the permitting authority to provide that compliance with the permit shall be deemed compliance with all other applicable provisions of the Act, if the applicable requirements of such provisions are included in the permit, or if the permitting authority, in acting on the permit, determines that such other provisions (which shall be referred to in such determinations) are not applicable. This determination or a concise summary thereof must be included in the permit. The EPA encourages States to employ the "permit shield" routinely to help stabilize the permit process and give greater certainty to the regulated community.

The EPA may alter the scope of the permit shield by rule. The Agency intends to prohibit use of the shield in cases where the source initiates changes that result in requirements becoming applicable to the source beyond those contained in the permit (until such changes are later incorporated into the permit). Sources seeking to obtain or renew a part 70 permit cannot be shielded from enforcement actions alleging violations of any applicable requirements (including orders and consent decrees) that occurred before, or at the time of, permit issuance. In addition, sources may not be shielded from requests for information pursuant to section 114 of the Act. The EPA has also provided that the shield will not extend to minor permit modifications (and to some changes made under the operational flexibility provisions pursuant to § 70.4(b)(12) and to most administrative permit amendments).

E. Permit Issuance and Review

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in §§ 70.7 and 70.8. Briefly, these include:

1. Permit Notification to EPA and Affected States

The permitting authority must provide notice to certain States and EPA of permit applications received and proposed permits. It must submit to EPA the following:

(a) The application for any permit, renewal, or revision, including any compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and

(b) Each proposed permit and each permit issued as a final permit by the State [505(a)(1)].

The permitting authority is required to notify all affected States of each permit application that must be forwarded to EPA. Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or those within 50 miles of the source. The permitting

authority must give all such States an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide its reasons for refusal in writing [505(a)(2)].

The EPA may waive its own and affected States' review of permits for any category of sources, except major sources, either when approving an individual program, or in a regulation applicable to all programs. The EPA may also waive its own right to review, but maintain the requirement for a State to notify affected States [505(d)]. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review affected sources under the acid rain program.

2. The Agency Review and State Response

The Act authorizes EPA to object to any permit that would not be in compliance with the applicable requirements of the Act. If EPA objects within 45 days after receiving either the proposed State permit or the notice that the permitting authority has refused to adopt an affected State's recommendations for the permit, the permitting authority must respond to EPA in writing. The EPA must provide the permitting authority and permit applicant a statement of reasons for the objection [505(b)(1)].

The permitting authority may not issue a valid title V permit if EPA has objected unless the permitting authority revises the permit to meet EPA's objections. The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit [505(c)].

3. Judicial Review and Public Petition

An approvable program must provide for judicial review in State court of the permit action. Such review must be available to the applicant, anyone who participated in the public participation process, and any other person who could obtain judicial review of the action under State law [505(b)(6)].

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the public participation period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition does not postpone the effectiveness of a permit that has been issued.

The Administrator must grant or deny a petition within 60 days after it is filed. If the permit has not been issued, EPA must issue an objection if the petitioner demonstrates to the satisfaction of the Administrator that the permit is not in compliance with the Act. If the permitting authority has already issued the permit and the petition is granted, EPA will modify, terminate, or revoke the permit, and the permitting authority may issue a revised permit only if it meets EPA's objection [505(b)(3)]. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307 [505(b)(2)].

Where EPA objects to a permit and the State fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit [505(c)].

4. Reopenings

Any approvable program, at a minimum, must require that the permitting authority will revise all major source permits with a remaining life of 3 or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the revision procedures that meet the requirements for permit revision and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term [502(b)(9)]. Approvable programs also must require that the permitting authority may terminate, modify, or revoke permits for cause [502(b)(5)(D)]. "Cause," as defined in the rule, may exist when the permit contains a material mistake made in applying the emission standards or limitations, or in other permit requirements.

Phase II acid rain permits will need to be reopened to incorporate NO_x provisions. Excess emission offset plans and all allowance allocations and transfers, however, must be deemed incorporated into each unit's permit, upon recordation or approval by the Administrator, without further permit revision and review.

If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation and reissuance of the permit. The EPA may extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA then may review the proposed determination under the review procedures of permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify or revoke and reissue the permit. The EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit [505(e)].

5. Permit Revisions

Taking the above into account, the EPA today outlines the mechanisms for permit modification and administrative amendments that are needed to revise the part 70 permit to accommodate changes which would otherwise violate terms and conditions of the permit. While States are required to provide for expeditious permit revisions, they have considerable flexibility in doing so. The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. States may meet their obligation by adopting the approach outlined by EPA in today's final rules or one which is substantially equivalent.

Administrative amendments are those defined in § 70.7(a) which can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors or changes in address or source ownership. Another type of administrative amendment inolves the incorporation of requirements established under State preconstruction review that meets procedural requirements that are applicable and substantially equivalent to those contained in §§ 70.7 (discussed below) and 70.8 and the compliance requirements contained in § 70.6 (e.g., monitoring, recordkeeping, reporting, and compliance certification).

The EPA's description of the most streamlined process it would approve for all other types of permit revisions is set forth in § 70.7(e). It employs two types of permit modification procedures:

(a) Minor permit modifications, and

(b) Significant permit modifications.

These are for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

The model provision contained in § 70.7(e) defines the types of permit modifications that a State could decide to process through minor permit modification procedures. They include

modifications that reflect increases in permitted emissions that do not amount to modifications under any requirement of title I an that do not meet certain other requirements. Minor permit modification procedures required that a source provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

Under EPA's model procedures for minor permit modifications, changes may be made by the source after it files a complete application with the permitting authority. The proposed modification will be available for review by EPA, affected States, and the permitting authority. The State may approve the proposed modification at any time. The EPA has 45 days from the date the Agency receives notice from the State to review the proposed modification, and the permitting authority cannot finally issue the permit until after EPA's review period has ended, or until EPA has notified the permitting authority that EPA will not object to the issuance of the permit modification, although the permitting authority may disapprove the modification prior to that time. The modification procedures must generally be completed and final action taken by the permitting authority no later than 90 days following the filing of a complete application.

The regulation also provides an opportunity for the permitting authority to modify the minor permit modification procedures to process in groups applications for changes at the lowest levels of emissions increases (as defined in the regulation). The regulation provides that a source may request in its application that changes, below a set threshold, be aggregated during a 90-day period, or until they reach the applicable threshold level, whichever comes first. These changes would then undergo the minor permit modification process, including review by the permitting authority, affected States, and EPA.

Under the minor permit modification option outlined by EPA, a source that makes a change before a permit revision has issued, does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is afforded only a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the permitting authority or EPA ultimately reject the sources proposed permit modification, the source would be subject to enforcement proceedings for any violation of these requirements. The permit shield under § 70.6(f) does not apply to minor permit modifications issued by the permitting authority.

The other type of permit modification procedures described are for significant modifications. After receipt of an application for a significant permit modification, a permitting authority would review only the specific changes proposed in the application and their impact on the continued compliance of the part 70 source with all applicable requirements of the Act.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of SO_2. These sources will have conditions in their permits prohibiting emissions exceeding the number of allowances held. Sources holding emissions allowances under the acid rain program may buy, sell, or trade those allowances. Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

6. Permit Renewal

Each permit is to have a fixed term not to exceed 5 years (except that permits for municipal waste combustors may have terms up to 12 years). Renewal permits are subject to the same requirements as those applying to initial permits, including the requirement for a timely and complete application and for a compliance plan and processing by the permitting authority within 18 months of a complete application.

The source will be able to operate after expiration of the permit only if it has submitted a timely and complete application for a new permit, as mentioned in the previous discussion on complete applications. To maintain the protection afforded by having a complete application, the source applicant still must respond in a timely fashion upon written request by the permitting authority to provide additional information needed to develop and issue the permit. Should a permit expire before a source submits a timely and complete application, the source's right to operate is terminated unless and until a part 70 permit is issued by the permitting authority [503(d)]. The application must be deemed to be complete 60 days from the date of its submission to the permitting authority, unless the permitting authority has already determined that the application is not complete. In addition, consistent with the established precedent in the National Pollutant Discharge Elimination System (NPDES) program under the CWA, where the fixed term of a permit has expired, the permitting authority must provide either that the permit remains effective or that the conditions of the permit remain enforceable until the permit is reissued, except as provided in regulations promulgated pursuant to title IV for the acid rain portions of a permit.

F. Fee Determination and Certification

A key requirement of State operating permit programs is that States establish an adequate permit fee program. Regulations concerning fee programs and appropriate criteria for determining the adequacy of such programs are set forth in § 70.9.

An approvable permit must require part 70 sources to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program [502(b)(3)(A)]. All fees required to be collected under title V must be used solely to support the permit program [502(b)(C)(iii)]. The EPA has ruled that these fees must cover a range of costs, including:

1. Preparing generally applicable regulations or guidance regarding implementation of the program or its enforcement.

2. Reviewing and acting upon any title V application.

3. General administrative costs of running the permit program, including information management activities to support and track permit applications, compliance certifications, and related data entry.

4. Implementing and enforcing the terms of the permit, excluding any court costs or other costs associated with an enforcement action and including adequate resources to determine which sources are subject to the program.

5. Emissions and ambient monitoring.

6. Modeling analyses and demonstrations.

7. Preparing inventories and tracking emissions.

8. Development and administration of the State small business stationary source technical and environmental compliance assistance program as it applies to the title V permitting obligations of part 70 sources [502(b)(3)7(A) (i)–(vi)].

The program will be presumed adequate if it would collect in fees an amount equal to or greater than the presumptive minimum program cost, which is $25 per ton per year (tpy) (1989 baseline) for the actual emissions of each regulated pollutant (for presumptive fee calculation). Regulated pollutants (for presumptive fee

calculation) mean all regulated air pollutants, with the exception of carbon monoxide, pollutants subject only to section 112(r), and pollutants which are solely regulated as chlorofluorocarbons (CFC) under section 602 [502(b)(3)(B) (i) and (ii)]. In addition, the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy [502(b)(3)(B)(iii)] or emissions that are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so). The State need not collect the presumptive minimum program cost if it demonstrates that a lesser amount will adequately support the direct and indirect costs of the program [502(b)(3)(B)(iv)]. Conversely, States must make a sufficient showing of fee adequacy if commenters present evidence to the Administrator during the program approval process which rebuts the presumption that $25/tpy is adequate to support the program. The permitting authority must provide for a periodic accounting of how the required fees were used solely to support the program and how they meet the presumptive minimum described above.

The EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources. The $25/tpy used to calculate the presumptive minimum program cost is to be increased each year according to the Consumer Price Index (CPI) at the time the index is published as defined by section 502(b)(3)(B)(v). Nothing in this section is intended to provide States any additional authority (beyond what is otherwise authorized under State law) to levy fees beyond the amount necessary to offset the program costs of title V.

Section 408(c)(4) of the Act provides that during the years 1995 through 1999, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under section 404. The Agency interprets this provision to mean that EPA may not approve part 70 programs that offset required permit program costs using emissions-based fees collected from affected units, under section 404, from 1995 to the year 2000.

If EPA determines that a State's fee program is not approvable, or that a State is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Such fees shall be designed solely to cover EPA's costs of administering the Federal permit program [502(b)(3)(C)(i)]. Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest [502(b)(3)(C)(ii)]. The EPA must deposit federally-collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

G. Federal Oversight and Sanctions

Federal activities for oversight of State operating permit programs include situations where a State fails to submit an approvable permit program, or EPA determines that a permitting authority is inadequately administering and enforcing a permit program or an approved permit fee program.

1. State Failure To Submit a Program

The EPA must apply sanctions to a State where the Governor has not submitted a program within 18 months after the deadline for submittal, or where 18 months have passed since EPA disapproved the program in whole or in part [502(d)(2)(B)]. The sanctions are the same as those in title I: A highway funding cutoff, and a two-to-one offset ratio for new or modified sources [179(b)] applicable to certain nonattainment areas. A sanction may be applied any time during the 18-month period following the date required for program submittal or program revision [502(d)(2)(A)]. The EPA must apply one of these sanctions after the above-referenced periods elapse. If the State has no approved program 2 years after the date required for submission of the program, EPA must promulgate, administer, and enforce a Federal permit program for the State [502(d)(3)].

If the EPA determines that a State's program is not approvable or that a permitting authority is not adequately administering an approved program, the EPA will promulgate a Federal permit program which the Agency will administer and enforce where the State fails to submit, correct, or implement its program. The Agency has the authority to collect reasonable fees from the permittees to cover the costs of administering the program. Any source that fails to pay fees shall be subject to additional penalties. Fees, penalties, and interest collected by the EPA will be deposited in a special U.S. Treasury fund for permitting activities and held for future appropriation.

2. State Failure to Implement a Program

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the State [502(i)(1)]. If EPA determines that the failure to administer and enforce the program persists 18 months after EPA's notice to the State, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program [502(i)(2)]. The EPA has the option of imposing any one of the sanctions before the 18-month period has passed [502(i)(1)]. If the State has not cured the failure to administer and enforce the program within 18 months after EPA's notice, EPA must promulgate, administer, and enforce a Federal permit program within 2 years after the notice to the State [502(i)(4)].

H. Required Enforcement Authority

Section 70.11 sets forth the enforcement authority required for an approvable part 70 program. It requires permitting authorities to have authority to seek and impose civil penalties and criminal fines as well as injunctive relief.

I. Permit/SIP Relationship

The SIP remains the basis for demonstrating and ensuring attainment and maintenance of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the particular permittee. Since permits must incorporate emission limitations and other requirements of the SIP, all SIP provisions applicable to a particular source will be defined and collected into a single document. The applicable requirements in the permit would include any recent SIP changes, whether as a result of a State or local SIP revision or of a FIP action by EPA. The EPA intends to assist in the implementation of the permit program through the use of model permits for numerous source categories, including model general permits as discussed below in section I.V.F. addressing general permits.

As previously discussed, title V affords significant operational flexibility. The relationship between title V permits and SIP's is a key factor in determining the extent to which operational flexibility is available to sources, since each permit, in part, must assure compliance with the applicable implementation plan. The EPA recognizes that it will take time to complete the transition from a regulatory system where SIP's are the

primary tool for implementing and enforcing the Act, to one where operating permits ultimately assume primary responsibility for implementation and enforcement.

The EPA is considering what means will aid in ensuring a smooth transition to increasingly general, and thus more flexible, SIP's, which may allow permits rather than the SIP's to specify the details of how SIP limits and objectives apply to subject sources. In particular, EPA will be seeking to develop information in the following areas:

1. The most efficient ways of implementing requirements of SIP's through permits, such as moving detail from SIP's to permits;

2. Flexible ways for sources to demonstrate compliance with reasonably available control technology (RACT) limits, such as through the use of protocols for defining equivalency or through the development of equivalency determinations in the permitting process (as discussed below); and

3. Expanded use of emissions trading and marketable permits to achieve SIP objectives as well as providing a stable accounting mechanism for tracking and enforcing emissions reductions at a source.

The EPA encourages the development of more flexible SIP's. For example, in the final rule, § 70.6(a)(8) provides that no permit revision is required for emission trades in economic incentive or marketable permit programs, providing that the permit contains a program or process for implementing the trade. Thus, a SIP containing a generic trading rule and a replicable procedure for implementing the rule through a permit may allow trading to occur without a permit revision, provided the permit contains the replicable procedure. This is similar to the way in which permits allow sources to shift among alternate scenarios that were initially provided for in the permit. If States choose to implement trading in this manner, the provisions of the permit allowing the trades must incorporate all of the procedural protections contained in the underlying SIP.

As discussed in the section on operational flexibility, States may also elect to develop SIP's that set forth trading and compliance provisions that sources could use to comply with SIP limits after 7-days notice. The SIP would have to include compliance requirements and procedures for the trade which are sufficiently specific to demonstrate compliance. Such provisions can prove useful to sources in cases where permits do not already provide for emission trades.

J. New Source Review/Title V Relationship

Decisions made under the NSR and/or PSD programs [e.g., best available control technology (BACT)] define certain applicable SIP requirements for the title V source. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification [503(c)].

Under today's final rule State and local permitting authorities have the option, but not a mandate, to integrate requirements determined during preconstruction review with those required under title V. Such integration would be consistent with the previously stated implementation goals of combining programs and building on existing State programs which typically have already accomplished such integration at the State level. As discussed above, if NSR is integrated with the procedural and compliance-related requirements contained in §§ 70.6, 70.7, and 70.8 (including opportunity for EPA and affected State review), an existing title V permit can be administratively revised to reflect the results of the integrated NSR process.

K. Small Businesses

The EPA has given serious consideration in this rulemaking to minimizing any undue impacts on small businesses. Accordingly, except for acid rain sources and municipal waste incinerators, EPA has allowed States to temporarily defer the title V permitting obligation of all nonmajor sources which would have been otherwise subject to title V provisions. This deferral will continue for such categories of nonmajor sources until the Agency has completed a rulemaking to consider whether a permanent exemption, continued deferral, or applicability of the permit program would be appropriate. In addition, States can exempt from review on a permanent basis those nonmajor sources and source categories which are subject to title V solely because they are subject to NSPS for new residential wood heaters and the NESHAP for asbestos demolition and renovation activities.

For those small businesses still required (or opting) to obtain a permit, and for other appropriate source categories, EPA is promoting the use of general permits where possible. A general permit is a single permitting document which can cover a category or class of many similar sources. Public participation and EPA and affected State review must be provided by the permitting authority before issuing a general permit [504(d)], but not when the individual sources subsequently submit requests for coverage and are evaluated for a permit reflecting the terms of the general permit. The permit issuance process for eligible sources can thus be greatly simplified, which substantially reduces the administrative burden on both sources and the permitting authority.

Section 507 requires States to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the SIP consistent with sections 110 and 112. The States must submit the proposed program within 2 years after enactment of title V [507(a)]. The State must also establish a Compliance Advisory Panel to monitor implementation of the program [507(e)].

The State or EPA may reduce any fee required under the Act for small business stationary sources [507(f)]. When developing regulations or control technique guidelines (CTG) which require CEMS, EPA must consider the appropriateness of requiring CEMS at such sources. This provision does not apply to CEMS under the acid rain provisions of title IV [507(g)]. The EPA must also consider the size, type, and technical capabilities of such sources and economic feasibility of the regulations when developing a CTG [507(h)].

L. Relationship With Section 112 (Air Toxics)

The operating permit program will implement standards issued under section 112 as it existed prior to the Act amendments of 1990, as well as future standards to be promulgated under section 112 as it was revised by the Act amendments of 1990 which describe requirements for the use of maximum achievable control technology (MACT), generally available control technology (GACT), and any technology used to reduce unreasonable residual risk. As noted earlier, a major source under section 112 is defined as any stationary source (or group of stationary sources), located in a contiguous area and under common control, which has the potential to emit 10 tpy or more of any hazardous air pollutant, 25 tpy or more of any combination of these pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies.

The State permit program submittal is required to contain a legal opinion affirming the adequacy of existing legal authority to implement and enforce section 112 provisions. Each title V permit must in part assure compliance

with these provisions as it must with all other applicable requirements of the Act. State law must allow a State to accept delegation of authority to implement and enforce MACT standards; to impose case-by-case determinations of MACT for new, reconstructed, or modified

* * * sources where no applicable emissions limitations have been yet established [112(g)]; and to develop and enforce case-by-case determinations of MACT where EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date [112(j)]. Section 112(g) of the Act requires the Administrator to "establish reasonable procedures for assuring that the requirements applying to modifications are reflected in the permit." The EPA will establish these requirements in the upcoming section 112(g) rulemaking.

EPA notes that some States may have certain procedural requirements they must satisfy before the State has the ability to impose Federal Clean Air Act requirements in a State-issued permit. Although some States may be able to take delegation of Federal requirements for MACT standards very freely, others may have to go through State rulemaking or other administrative approval processes before having authority to impose Federal requirements in a permit. The EPA encourages States to examine their procedures for implementing current and newly promulgated Federal requirements. In most cases new Federal standards, such as new MACT standards, will be promulgated with sufficient notice and sufficiently long compliance schedules that a State will have time to follow reasonable procedures implementing the standard. As long as the State is able to issue in a timely manner permits that assure compliance with the applicable requirements of the Act, the program is approvable under title V and these regulations. If a State's procedures are such that the State is not able to implement Federal requirements in time to issue complete permits, the EPA must determine whether the State is properly implementing the title V program.

The operating permit program will also be the principal long-term mechanism for implementing alternative emissions limitations for sources under section 112(i)(5) of the Act. This section provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants, provided certain criteria concerning early reductions are met. The Administrator or a State acting pursuant to a title V permit program is required to issue a permit allowing an existing source (for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants, 95 percent in the case of particulate hazardous pollutants, from the source) to meet an alternative emissions limitation reflecting such reduction in lieu of complying with a standard under section 112(d) within the time period provided in the standard. This extension would apply for a period of 6 years from the compliance date for the otherwise applicable standard, provided that the reduction occurs before the standard is proposed. The one exception is specified in section 112(i)(5)(B) wherein existing sources that prior to proposal make a federally-enforceable commitment to achieve the reductions, can have until January 1, 1994, to achieve the reduction. For permit applications to ensure effective implementation of section 112 without placing sources in undue jeopardy of violating a hazardous air pollutant standard involving early reduction demonstrations according to section 112(i)(5) of the Act, the permitting authority is required to issue the permit within 9 months of receipt of a complete application.

M. Relationship With NPDES Program

The proposal solicited comment on whether there should be a presumption for resolving title V implementation issues consistent with relevant experience in the NPDES program. Commenters stated that, although NPDES experience is in many cases useful, the creation of a presumption is not a sufficiently flexible approach given the dissimilarities between the two programs. The EPA recognizes the significant dissimilarities between title V and the NPDES program. While EPA will continue to look to the NPDES program for guidance, EPA agrees with commenters that NPDES precedent should not be presumed binding for purposes of decisions made in the implementation process for the title V program.

N. Relationship With Title IV (Acid Rain)

Eventually title IV mandates implementation of an acid rain control program to be carried out through operating permits issued under title V as modified by title IV. Final rule promulgation for regulations to implement the entire acid rain program is required within 18 months after enactment. The acid rain permits regulations are expected to cover a wide range of topics, including:

1. Acid rain specific requirements for permits and compliance plans (emissions limits, deadlines, monitoring);

2. Additions to State part 70 program approval criteria specific to the acid rain program;

3. Requirements for alternative compliance methods (e.g., phase I extensions, reduced utilization, substitution units, energy conservation, phase II repowering, etc.);

4. Compliance certification reporting requirements;

5. Requirements for designated representatives.

In addition, acid rain emissions monitoring requirements, and excess emissions offset planning and penalty requirements, must be specified in the permit.

The general relationship between titles IV and V is governed by three important provisions of the Act. Sections 506(b) and 408(a) state that the requirements of a title V program will apply to the permitting of affected sources under the acid rain program, except as modified by title IV. In addition, as provided in section 403(f), compliance with the acid rain program requirements will not exempt or excuse the owner or operator of any source subject to those requirements from compliance with any other applicable requirements of the Act (e.g., SIP, PSD/NSR, NSPS).

Permits will be issued to affected sources under the acid rain program in two phases. EPA will issue phase I permits in 1993, which will become effective on January 1, 1995. These permits, and all permits issued to acid rain affected sources, will have an effective permit term of 5 years. Regulations describing phase I Federal permit issuance procedures are required to be promulgated within 18 months of enactment. Phase II permits will be issued by States with approved title V programs beginning in 1997. State-issued permits will be issued in accordance with the procedures defined in this part, as supplemented by the future acid rain regulations. Should a State fail to adequately administer the phase II program, EPA will take back the entire permit program. The EPA will then implement the Federal title V regulations for permit issuance, as supplemented by Federal acid rain permit issuance procedures, and will issue permits to acid rain sources within that State.

During phase I, approximately 110 affected sources, having more than 261 individual units, will have to be permitted. The units at these sources will receive marketable allowances for SO_2 emissions, as specified in section

404, Table A of the Act. In addition, other units may become subject to phase I under one of several phase I compliance options. Phase I permit applications are to be submitted to the EPA Regional Office by February 15, 1993. Phase I permits will become effective on January 1, 1995. It is likely that many part 70 State programs will be approved after EPA has issued phase I permits.

Under part 70, within 3 years after EPA approval of a state permit program, the State will be required to issue permits covering all applicable requirements of the Act, to all sources in its jurisdiction, including sources subject to the acid rain program. If a State does not have an approved part 70 program by July 1, 1996, EPA is required to issue the first round of phase II SO_2 permits by January 1, 1998. If a State receives program approval after July 1, 1996, and EPA determines that the State can satisfactorily review and issue phase II SO_2 permits by the end of 1997, EPA may delegate this responsibility to the State. The effective date for phase II SO_2 permit requirements will be January 1, 2000. Phase II NO_x applications are due on January 1, 1998. The permitting authority (the State or EPA) will have to reopen the previously-issued phase II SO_2 permit before January 1, 2000, to add those limits to the permit.

IV. Discussion of Regulatory Changes

This portion of the preamble is organized according to the sections of part 70, and discusses the principal regulatory changes made in the final rules in response to public comments. This portion of the preamble focuses on the rationale for these changes.

A. Section 70.1—Program Overview

This section of the regulation introduces certain concepts underlying the regulatory requirements of part 70. These concepts include implementation principles utilized in regulatory development.

Few comments were received on this proposed section; however, several commenters supported EPA's recognition of the implementation principles contained in the proposal and urged that the final regulation be as consistent as possible with them. One commenter suggested that environmental protection occur in conjunction with enhancing the productive capacity of the nation.

The Administrator agrees that enhancement of the nation's productive capacity is an important concept that should be incorporated into the first implementation principle. This is consistent with section 101(b)(1) of the Act which states that among its goals is one to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. The Administrator expects these principles to guide subsequent implementation of these final regulations as they have governed regulation development.

B. Section 70.2—Definitions

Many definitions of terms in other parts of the Act or EPA regulations are utilized in part 70. In addition, a number of new terms created in conjunction with developing the part 70 regulations are defined in this section. These new definitions include terms necessary to communicate effectively the new regulatory requirements.

Several significant comments were received on how the definitions would be applied in various sections of the regulation. In responding to these commenters, some important changes to key definitions have occurred. Important changes were made to definitions of "applicable requirement" and "regulated pollutant." Several new terms, "section 502(b)(10) changes," "emissions allowable under the permit," "permit program costs," "part 70 program," and "regulated pollutant (for presumptive fee calculation)," were added to the definitions. Separate discussions of those changes are contained in the sections describing the program areas where these definitions are primarily used. In addition, some terms have either been moved from the proposed definitions or added in response to comment for exclusive use in a particular section. These include administrative amendment (§ 70.7), actual emissions. (§ 70.9), and complete application (§ 70.5).

C. Section 70.3—Applicability

1. Five-Year Exemption for Nonmajor Sources

Section 502(a) of the Act provides the Administrator the discretion to exempt one or more source categories (in whole or in part) from the requirement to obtain a permit "if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." The Act specifies that major sources may not be exempted from these requirements.

The EPA initially proposed, consistent with the authority given in section 502(a), to allow States to exempt all nonmajor sources (other than acid rain affected sources) from the requirement to obtain a permit for 5 years from the date of State program approval. The proposal made the exemption for nonmajor sources in nonattainment areas contingent upon a showing by the permitting authority that title V operating permits were not necessary for the State to assure compliance with the implementation plan obligations applicable to defined sources. The EPA also reserved the ability to determine in future rulemakings whether permitting obligations should be deferred for nonmajor sources which become subject to new section 112 standards.

Section 70.3(b)(1) of the final part 70 regulations retains most of the provisions of the proposal and provides States the option of exempting all nonmajor sources (except for affected sources and solid waste incineration sources) from the requirement to obtain a permit until EPA completes the rulemaking described below on applying the permitting program to non-major sources. As discussed below, EPA will complete this rulemaking within five years of the date it first approves a State program that defers such sources. A State may choose to provide the 5-year temporary deferral to all "nonmajors" or to nonmajors only in selected source categories. The deferral may not be extended to any major source, as this is explicitly prohibited by section 502(a) of the Act. As proposed, the final rule also specifies that no affected source under the acid rain program can be exempted from the requirement to obtain a title V permit, since section 408(a) provides that permits shall be the vehicle for implementation of the acid rain requirements of the Act.

One change in the proposal is that solid waste incineration units that are nonmajor sources can be deferred only until the time they are required to obtain permits under section 129(e) of the Act. States should not be allowed to override the Act's specific schedule for permitting this specific source category.

The EPA finds that without this deferral, compliance with the permitting requirements would be "impracticable, infeasible" and "unnecessarily burdensome on these source categories" within the meaning of section 502(a). Two independent and sufficient reasons support EPA's determination. The first was presented in the preamble to the proposal, i.e., the burden on the permitting authorities and EPA will make permitting all nonmajor sources in the early stages of the program impracticable and infeasible. The second reason, which by itself justifies deferral, is that the requirement for nonmajor sources to obtain a title V permit during the early stages of the

program would be "unnecessarily burdensome" for these sources. This is because the anticipated burden on permitting authorities and EPA, as described in the preamble to the proposal, would translate into a significant, additional, and unnecessary burden on nonmajor sources if they were required to be permitted.

Nonmajor sources will be disproportionately affected by the administrative difficulties faced by the permitting authorities. The great majority of nonmajor sources are small businesses, and many are not currently subject to State air permit programs. Nonmajor sources will require more assistance from permitting authorities and EPA because of the relative lack of technical and legal expertise, resources, as well as inexperience in dealing with environmental regulation that characterizes most small businesses. If permitting authorities become overburdened due to a backlog of thousands of permits to be processed, nonmajor sources will be unable to obtain additional technical and procedural assistance from permitting authorities. Although the small business technical assistance program should help these sources, the small business program staff will also be assisting small businesses that are major sources and will face the same problems as permitting staff.

Difficulty in obtaining assistance will unnecessarily burden nonmajor sources in various ways. For example, difficulty in obtaining assistance from permitting authorities could make it problematic, if not impossible, for some nonmajor sources to submit a timely and complete application. If they fail to submit a timely and complete application, they would lose the "application shield," thereby forcing them to close or run the risk of operating without a permit in violation of the Act. Nonmajor sources' inexperience with permitting and their relative lack of technical and legal resources also make it more likely that such sources will require more permit revisions soon after permit issuance. If permitting authorities are overburdened, it will be difficult for nonmajors to obtain permit revisions early in the process. This will prevent them from promptly making what they believe are necessary changes.

The EPA notes that some nonmajor sources would already be permitted at the State level, and therefore would have some experience with the permitting process and completing permit applications. A State need not extend the deferral to these sources. However, even these sources will have to deal with the increased burdens flowing from the requirements of other titles of the Act. The EPA also notes that an alternative to deferral under section 502(a) exists in the form of general permits. However, even for source categories well-suited to general permits there will likely be some burden in complying with these requirements.

As stated above, EPA expects that the great majority of nonmajor sources will be small businesses. Some nonmajor sources will in fact be either adjuncts to large corporations possessing significant technical and legal expertise, or will have independently acquired such resources and expertise. It is therefore likely that there will be certain nonmajor sources for which the requirements of the part 70 program may not be unnecessarily burdensome.

While the permitting requirements will be significantly less burdensome for these sources, EPA has determined that it is not feasible to subject these sources to different treatment for purposes of this deferral. This is primarily because the class of sophisticated nonmajor sources described above bears little or no relation to the delineation of source "categories" as that term is used in section 502(a). Rather, EPA believes that these sources typically represent a small percentage of each of the various categories of nonmajor sources. Given the anticipated lack of resources discussed above, it is not reasonable to expect permitting authorities to sift through the large number of nonmajor sources and select those for which the permit program requirements will not be unnecessarily burdensome. Indeed, the requirement to conduct such a survey would to a great extent undercut the benefits intended by this deferral, and would not be justified by the minor gains in emission controls resulting from the permitting of these few nonmajor sources.

As already mentioned, States are free to apply the deferral only to certain categories of nonmajor sources. The part 70 regulations therefore do not prevent a State from drawing distinctions based upon which nonmajor sources have the resources and expertise necessary to comply with the permit program.

Compelling States to permit nonmajor sources during the early stages of the title V permitting program is not only extremely burdensome for these sources, it is unnecessarily so. Requiring nonmajor sources to be permitted at the beginning of the program would not provide major benefits to air quality and might actually hinder implementation of the Act. The temporary exemption for nonmajor sources poses few risks to progress in improving air quality. By definition, these sources emit less than major sources and are less significant contributors to air quality problems. Furthermore, deferring permitting requirements does not defer a source's obligation to comply with the underlying substantive air pollution control requirements. Nonmajor sources may be subject to NSPA or existing NESHAP regulations that in general already contain many of the same monitoring, recordkeeping, and reporting requirements that would apply to major sources.

Requiring nonmajors to obtain permits at the start of a permitting program could hinder implementation of the Act. It would stress the system by greatly increasing the number of permits required to be processed. This additional stress would make it more likely that errors would occur in permitting major sources, which could adversely affect air quality. Concentrating State permitting resources on major sources during the first phase of the program will make more efficient use of those resources.

Furthermore, deferring permitting requirements for nonmajor sources temporarily does not just delay the permitting burden on these sources, it will significantly decrease the burden. Once the programs have been operating for several years and the initial wave of permitting is completed, permitting staff will have the time and experience necessary to assist nonmajor sources which become subject to the permitting process.

Thus, the temporary exemption of minor sources furthers important policy goals. The failure to defer nonmajors would greatly increase the burden on those sources, would probably not provide significant environmental benefits, would stress the permitting system at its most vulnerable time, and might actually hinder achievement of air quality gains. Deferring the applicability of title V requirements to nonmajor sources temporarily might even have a net air quality benefit to the extent it facilitates bringing more major sources into compliance earlier.

The EPA believes that the preceding analysis of the burden on nonmajor sources is ample justification for the exemption under section 502(a) being implemented here. This is particularly so in light of the principle expressed in the *Alabama Power* decision that a deferral of the applicability of Act provisions requires far less justification than an outright exemption [636 F.2d at 360, n. 86].

The burdens of the permitting program identified above, including the lack of adequate resources and technical and legal expertise on the part of sources, as well as the potential difficulty in obtaining technical and legal assistance from permitting authorities, are likely to continue for some significant number of nonmajor sources beyond the early stages of the program. Accordingly, EPA believes it would be unduly burdensome, and in some cases onerous, to subject all such sources to the full panoply of procedural and substantive requirements embodied in the permit rules being promulgated today. Although the Agency anticipates that many nonmajor sources will qualify for general permits and thereby avoid the greater burdens associated with obtaining specific permits, EPA also believes it likely that a certain number of categories of nonmajor sources should be permanently exempted from the permit program. For others, a continuation of the deferral of program applicability may well be appropriate. This is so despite the support that will be offered through the Small Business Technical Assistance Program established under section 507. While that program will be beneficial to nonmajor sources, the extraordinary number of nonmajor sources that could conceivably enter the permit system at the expiration of the 5-year period, as many as 350,000 sources, could overwhelm the capacities of the State technical assistance programs.

To address these serious concerns, EPA will, within 3 years of the first approval of a full or partial State permit program that defers nonmajor sources, initiate rulemaking to determine whether to grant a further deferral from the permit program to all or some specific categories of nonmajor sources. In addition, the rulemaking will consider whether to grant permanent exemptions to any source categories for which there is a sufficient record to support such an exemption. As part of this rulemaking, EPA, in conjunction with affected sources, will gather information which will enable the Agency to make exemption or deferral determinations as appropriate. Moreover, the rulemaking will consider whether the permitting program should be structured more effectively for nonmajor sources that may be brought into the program at that time. The Agency believes that after several years of experience with the title V program, both EPA and the States will be in a better position to determine whether the program may be structured more effectively for the large number of small sources that may be covered by the program. The EPA will propose such a rule no later than 4 years following approval of the first full or partial State permit program with a deferral, and promulgate the rule prior to EPA's first approval of a State program that defers such sources.

2. Nonattainment Area Demonstration Requirement for 5-Year Exemption

As mentioned above, the proposal made the 5-year deferral for nonmajor sources in nonattainment areas contingent upon a showing by the permitting authority that the State could effectively enforce its SIP obligations on such sources without using federally-enforceable operating permits. State representatives opposed having to make a demonstration for deferring nonmajor sources in nonattainment areas.

The final rules do not include this requirement because such a showing is not required by the Act. Section 502(a) of the Act makes no distinction regarding treatment of exemptions in attainment areas versus nonattainment areas. The EPA also determined that the proposed provision was impractical and unnecessary. It would have demanded a significant amount of resources from State agencies at a critical period in program development. States said that it would have taken almost as much effort to make the demonstration as it would to permit the nonmajor sources. The purpose of allowing States to defer permitting obligations for nonmajor sources would have been dramatically undercut if a special showing were required for nonattainment areas.

3. Permanently Exempted Source Categories

The proposed rules solicited comment on individual source categories recommended for permanent exemptions. While several industry commenters supported the exemption of source categories from title V permitting, there was no consensus among these commenters concerning which particular sources should be exempted. The most frequently suggested source categories for exemption included wood stoves and asbestos demolition/renovation sites.

The EPA today is exempting two source categories: All sources subject to regulation under the demolition and renovation provisions of the NESHAP for asbestos (40 CFR part 61, subpart M, § 61.145); and all residential wood heaters subject to regulation under the NSPS (40 CFR part 60, subpart AAA). As with the 5-year deferral for nonmajor sources, there are two reasons for exempting asbestos demolition and renovation operations and residential wood heaters. Each reason provides an independent justification for the exemptions. First, as described in more detail below, permitting such sources would be impracticable and infeasible for permitting authorities. Second, permitting such sources poses an unnecessary burden for these sources. Additionally, exempting these source categories furthers an important goal of the Agency's implementation of the Act: It minimizes disruption of many existing State programs. Several State permitting programs already exempt both categories from their own permitting programs. The EPA has typically deferred the responsibility for addressing situations involving the regulation of residential sources to State and local agencies. In addition, requiring permits from both of these source categories would involve the practical problem of determining who would be permitted. Would EPA require permits from each individual demolition operation or wood heater owner, or from demolition/renovation contractors and wood heater manufacturers? Either way presents numerous practical problems. Additional support for exempting these specific source categories is provided below.

(a) Asbestos demolition and renovation operations. Many owners and operators of asbestos demolition and renovation operations may have "ownership" of such a source only briefly. It would be difficult and burdensome for individual owners and operators to obtain permits for one-time demolition and renovation operations with which they are associated. Conversely, other owners or contractors may be associated with many temporary operations during the term of any permit, and this scenario would involve the difficulties related to permitting temporary sources. Permitting asbestos demolition and renovation operations would also be difficult because these activities often commence at a particular site after relatively short notice. Waiting for a title V permit to undergo the entire permit issuance process could cause serious disruptions for owners and operators.

The burden imposed by requiring permits for asbestos demolition and renovation sources is unnecessary because it would provide few additional environmental or enforcement benefits. The EPA and delegated States under the NESHAP receive advance notice of all regulated demolition or renovation operations. Enforcement personnel are able to target and prioritize inspection resources and monitor compliance with NESHAP work practice standards. The EPA and the States also receive waste

disposal documentation verifying proper disposal at EPA-approved disposal sites. Because of the temporary nature of these sources, permits issued to them would likely only require compliance with the NESHAP work practice standards because additional reporting or recordkeeping requirements would be unnecessary. No monitoring in the traditional sense would be required because the asbestos NESHAP is a work practice standard, not an emissions limitation.

(b) New residential wood heaters. The EPA finds that a permanent exemption for new residential wood heaters subject to the NSPS is appropriate because of the burden that federal permitting would place on homeowners, distributors, manufacturers and permitting authorities alike. First, requiring permits from all subject residential wood heaters (likely numbering in the hundreds of thousands) in attainment and nonattainment areas across the country would require a significant allocation of resources from both homeowners and permitting authorities to achieve relatively minimal air quality benefits in some areas. Because the problems associated with particulate matter and hazardous air pollutant emissions from wood heaters tend to be very localized in nature, the EPA believes that a requirement to obtain a permit for owners of residential wood heaters subject to the NSPS is unnecessary in some areas and should remain in the discretion of State and local agencies. Some local agencies in nonattainment areas have already successfully employed permitting programs for these sources as part of their attainment strategies.

Second, if homeowners were required to obtain a title V permit, they would likely be required to provide verification that they were in compliance with certain installation and/or fuel quality requirements. This might involve expensive inspections or laborious recordkeeping. It would be unnecessarily burdensome for private citizens to comply with such requirements. The frequent transfers of residential ownership could also complicate compliance efforts. If wood heater manufacturers or distributors were the permittees, there would be no practical way for wood heater performance in residential locations to be monitored. Third, the permitting of new residential wood heaters by permitting authorities could prove to be extremely resource intensive. The large number of permittees affected would likely experience problems in obtaining technical assistance from the permitting authority, which would make obtaining a permit more burdensome for homeowners. Effectively determining the number and location of all wood heaters in a given jurisdiction would be a complicated task. There are hundreds of thousands of such sources throughout the country. Many State and local agencies in areas where wood stoves are a significant concern have already developed non-regulatory public information, outreach, and voluntary control programs. Adding the additional burden of permitting these numerous sources would likely not be an efficient use of agency resources.

4. Definition of "Regulated Air Pollutant"

The proposal defined "regulated pollutant" to mean substances for which a standard has been promulgated under the Act. The term regulated pollutant was used in the proposed regulation in describing what information is required in permit applications and permits. This caused confusion because the Act defines the term "regulated pollutant" differently and uses it specifically for calculating fees. To avoid this confusion, the final part 70 regulations use the term "regulated air pollutant" to describe the information required for permit applications and permits, and the term "regulated pollutant (for presumptive fee calculation)" for use in calculating fees.

The term "regulated air pollution," as now defined, accurately reflects all pollutants subject to a standard, regulation, or requirement. This term is used specifically in the regulations to describe what information is required in a permit application and in a permit. As now applied in the regulations, the revised definition will ensure that the permitting authority receives complete information on all pollutants which are "regulated" under the Act and emitted by a source. By having this information, the permitting authority can properly determine which requirements under the Act apply to the source, and include these requirements in the permit. Only by including all requirements applicable to a source in the permit can a permitting authority ensure that the permit assures compliance with the Act.

Several changes were made to the definition of "regulated air pollutant" (which was "regulated pollutant" in the proposal). First, substances regulated under title VI of the Act (protection of stratospheric ozone) were added to the list of regulated pollutants. As a general rule, regulatory requirements under the stratospheric ozone program should be included in a source's permit. However, because of the nature of some title VI regulations, the Administrator may determine by future regulation that some CFC regulations need not be in an operating permit. For example, the Administrator may decide that a title V permit need not contain production limits that apply on a company-wide, rather than facility-specific, basis.

Second, the final part 70 regulations clarify when a substance regulated under section 112 becomes a "regulated air pollutant." The term "regulated air pollutant" includes any pollutant subject to a standard or other requirements under section 112 of the Act, including section 112(r) of the Act. As applied to an individual source only, the definition includes any pollutant for which a case-by-case MACT determination is made under section 112(g)(2) of the Act, which requires such a determination to be made specifically in response to a modification or new construction by the source. This type of MACT determination, which is to be made by the permitting authority if EPA has not established any applicable emissions limitation previously, will apply only to the individual source for which it was developed. Because the requirement to make such a MACT determination is triggered by action by a single source, EPA believes that such a determination should not require the substance to be treated as a regulated pollutant for the entire regulated community at the time the determination is developed for a single source.

5. Definition of Major Stationary Source

Evaluation of the requirements of the Act with respect to the outer continental shelf (OCS) program has prompted the Agency to delete the reference to vessels in the definition of major stationary source. Specifically, section 328(a)(4)(C)(iii) requires that emissions from vessels servicing or associated with the OCS source be considered direct emissions from the source. The promulgated definition will allow permitting of these sources consistent with the requirements of the OCS program.

Commenters also raised concerns about flexibility of research and development (R&D) operations. Although EPA is not exempting R&D operations from title V requirements at this time, in many cases States will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located. Under such an approach, the facility would be treated as though it were a separate source, and would then be required to have a title V permit only if the R&D facility itself would be a major source.

D. Section 70.4—State Program Submittals and Transition

1. Approval of Program Elements

Many State and industry commenters strongly supported various existing State programs and suggested that these programs should be approved with minimal change; one of these commenters suggested that EPA should be responsible for identifying what would have to be changed in the submitted program for the State program to be approved. Several commenters further suggested that EPA allow "equivalent" programs where they achieve the same results as the title V program.

The EPA has no leeway to accept current programs other than to judge them against he criteria for program content specified in section 502(b). However, in promulgating these regulations, the Administrator has provided for as much flexibility as possible in approving State programs in an effort not to disrupt them unduly. The provisions in section 502(g), however, provide for interim approval of programs for a period of up to 2 years if the program "substantially meets" the program content criteria in 502(b). The criteria for determining if a program substantially meets title V and is eligible for interim approval was proposed in § 70.4(d) and public comment was considered in establishing the final criteria.

Furthermore, EPA wishes to note that, consistent with its implementation goals for title V, it will attempt to be flexible in determining whether a State program meets the required minimum elements. This will be particularly true where the State has an established track record in implementing an air operating permit program.

In some cases, certain provisions within the final rules directly provide flexibility to States in meeting the minimal program requirements. For example, § 70.4(b)(13) requires in part for State program approval "provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions, including permit modifications." This section states further that the State may meet this obligation by "using procedures that meet the requirements of § 70.7(e) of this part or that are *substantially equivalent*." (Emphasis added.) Here, EPA has provided a model for the State to follow and will approve different but effective State approaches which accomplish the same statutory and regulatory objectives. At the same time, however, the Administrator will ensure that State programs meet the requirements of section 502(b).

2. Underlying Regulations

The proposed § 70.4(b)(2) required that the State include in the program submittal the regulations that comprise the program and evidence of their correct adoption, including the notice of public comment and significant comments received by the State. States commented that this type of evidence may no longer be accessible. One State commented that it is unreasonable to require evidence that existing regulations, some of which were adopted 20 years ago, were correctly adopted and that, for new regulations, States should only need to make a demonstration that the general adoption process was procedurally correct, with a statement from the Attorney General that the regulations followed proper procedures.

The Administrator agrees with the concern that proper regulatory adoption evidence may be unavailable. Section 70.4(b)(2) in the final regulations leaves it up to the State to provide the evidence of proper adoption that is available. Added to the final regulations is the requirement also to submit any regulations or statutes that could restrict the effective implementation of the permit program. The EPA needs to see any such regulations, and needs the Attorney General's opinion as to their validity, to be able to judge if any regulatory changes need to be made before full approval of a program submittal is warranted.

3. Opportunity for Judicial Review

Section 502(b)(6) of the Act requires that a part 70 program provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." This requirement for State program approval was reflected in § 70.4(b)(3)(x) of the proposal.

The final rule clarifies that the State must allow the denial, as well as the issuance, of a permit to be challenged in State court. The final regulation provides that the source and the public have the right to bring an action if the permitting authority fails to issue or deny the permit in the time required by the State program, as required by section 502(b)(7). If a State fails to act on initial permit applications, EPA may impose sanctions or withdraw program approval.

The final regulation also was modified to accommodate changes in permit modification procedures under § 70.7(e) of this part. A provision was added requiring States to allow judicial review if the permitting authority fails to act on a permit modification application and the source has already made the requested change. In that case, an action could be brought against the permitting authority for failure to act (seeking a court order requiring the permitting authority to act finally on the application).

No time limits on challenging a permit in State court were included in the proposal, but comments were solicited on the need for such limitation. No adverse comments were received and some commenters indicated permitted sources need assurance of stable permit conditions after a reasonable time for challenge has passed. Two industry commenters suggested that any permit challenge limitations that EPA establishes should include provisions allowing challenges to the permit after the time for the challenge has lapsed. Such provisions are especially important, they argued, as new grounds may arise after the period for challenge has lapsed, and as the government's interpretation of a permit may not be known until an enforcement action is commenced.

An additional provision addressing the opportunity for judicial review has been added to the final regulations. Section 70.4(b)(3) requires that this opportunity for State court review of the final permit action must be the exclusive means for obtaining judicial review of the permit, and that all such petitions for judicial review must be filed no later than 90 days after final permit action, or such shorter time as the State requires. If new grounds for challenge arise after the 90-day review period has ended, the party may challenge the permit on such new grounds within 90 days after the new grounds arise. Such new grounds must be based on new information which was not available during the review period. New grounds specifically do not include a government interpretation of a permit of which the source claims in an enforcement action to have been unaware. After this period for review no permit may be challenged in court, including any State or Federal enforcement action. Section 307 clearly establishes this rule for circumstances in which EPA is the permitting authority. Any dispute over interpretations of a permit may be resolved in an enforcement action, if any.

One of the primary goals behind title V is to have greater certainty for sources and State and Federal enforcement personnel as to what requirements

under the Act apply to a particular source. In order to achieve that certainly, the terms of the permit cannot be subject to challenge in enforcement actions. Limiting judicial review of permits has advantages for the permittee, the permitting authority and EPA. The advantage for permittees is the added certainty and stability gained by their permit no longer being subject to challenge. Enforcement at the State and Federal level should also benefit significantly. Currently, many enforcement actions are hindered by disputes over which Act requirements apply. Under the permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act's requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.

In the preamble of the May 10, 1991, proposal, EPA suggested that, to ensure national consistency in the acid rain program, it might be appropriate to require that challenges to acid rain requirements in part 70 permits be reviewed only in Federal courts. The EPA wishes to clarify that it did not mean that action on the State-issued permit itself is subject to judicial review in Federal court. As is more fully explained in the preamble to the recently-proposed acid rain regulations, only certain specific decisions of the Administrator that are incorporated into part 70 permits will be reviewed in Federal court. Final action on the permit itself will be subject to review in State court, as is provided for in section 502(b)(6).

4. "Act On" Permits

Section 503(c) establishes the requirement that sources submit permit applications within 1 year of the date they become subject to the permit program, and that the permitting authority issue or deny permits within 18 months of the application submittal. Initially, the date that sources become subject to the program is upon program approval. The language in section 503(c) goes on to establish an exception to this schedule by allowing the permitting authority to develop a 3-year phased schedule for "acting on" the first set of permit applications submitted within 1 year of program approval. Section 503(c) requires such phased schedule to provide that at least one third of the permits be "action on" annually in each of the 3 years.

One State proposed that the requirement for a permitting authority to "act on" a permit [as discussed in the transition plan requirement in § 70.4(b)(11)] should mean "begin review" of, rather than issue or deny the permit. The EPA believes that the requirement of section 503(c) that at least one third of the applications submitted within the first year of a program be "acted on" annually after the effective program date must be read to mean that final action will be taken on those applications within the specified timeframe.

5. Operational Flexibility

(a) Proposal and Comments. The proposed regulations implementing section 502(b)(10) appeared in § 70.6(d) in the proposal, but now are found at § 70.4(b)(12). Industry comments generally approved EPA's regulatory proposal implementing section 502(b)(10), and supported the measures as necessary to allow American industry to remain competitive and adjust to changing market conditions. Some, however, wanted the final rules to provide more flexibility.

Environmental groups and a number of States strongly criticized the proposal's operational flexibility provisions. These critics maintained that the statute allows sources to shift among different operating scenarios (with different emissions) only if the various scenarios are set forth in the permit. Otherwise, they claimed, the source must obtain a permit revision before making the change at the facility. These critics stated that the extension of the permit shield to changes made pursuant to § 70.6(d) made matters even worse, because any changes made under the 7-day notice would receive no review from the permitting authority, EPA, or the public.

A number of State and local air pollution control agencies also strongly criticized EPA's view stated in the proposal that emissions or other practices not prohibited by a permit are allowed. They argued that this concept runs counter to the way State and local air permitting programs are run, and is far too open-ended. One permitting authority commented that allowing such "off-permit" activities would make it impossible to use a title V operating permit program as the basis for a market-based compliance system, because the permits would no longer necessarily reflect the total emissions from any facility. Several States have commented that mandating this interpretation as a program element would require such a fundamental restructuring of their existing operating permit programs that the State would not be able to adapt the State program to title V. Some also stated that this view is at odds with section 502(b)(10) of the Act.

(b) Structure of the general provisions. As a result of public comments and the Agency's further consideration of this controversial provision, EPA has changed the regulatory provisions implementing section 502(b)(10) in several ways. The regulations have been moved from § 70.6(d) (on permit content) to § 70.4(b)(12) (in the section on permit programs) because the requirement is one for the program itself.

Despite the views of some commenters to the contrary, EPA believes that the Act requires a State to meet the requirements of section 502(b)(10) in order for the Agency to approve the title V permit program. Section 502(b) states that "the minimum elements of a permit program * * * shall include each of the following." For reasons that will be fully set out in the detailed response to comments document, neither sections 506(a) nor 116 allow States to avoid this program element. As a result, the final regulation includes program elements for operational flexibility which the State is mandated to provide in its title V program.

The EPA has, however, reconsidered the question of exactly what this statutory provision contemplates. There was serious disagreement among the commenters concerning whether section 502(b)(10) allows sources to operate in ways that are not specifically addressed in the permit without obtaining a permit revision (as long as the changes meet the specifications stated in the provision), or whether it merely states that, if the various operating scenarios or provisions for increasing and decreasing emissions at various emitting units are stated in the permit, the source may shift among these operations or units without obtaining a permit revision. After careful analysis of the statute and legislative history, EPA concludes that the statutory language gives EPA broad authority to provide source operational flexibility. The EPA has structured its final regulation to give the States flexibility in meeting their requirements under section 502(b)(10), while ensuring that programs must provide operational flexibility consistent with title V and the underlying applicable requirements it implements.

In brief, the final regulation identifies three ways to provide operational flexibility:

(i) Programs must allow certain narrowly defined changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source

does not exceed the emissions allowable under the permit.

(ii) The permit program may allow emissions trading at the facility to meet SIP limits where the SIP provides for such trading on 7-days' notice in cases where trading is not already provided for in the permit; and

(iii) The permit program must provide for emissions trading for the purposes of complying with a federally-enforceable emissions cap established in the permit independent of or more strict than otherwise applicable requirements.

The first and third ways of implementing operational flexibility are mandatory on the States; the second is available to States that wish to take advantage of it.

As noted above, a number of State and environmentalist commenters argued that section 502(b)(10) only allows operational changes without a permit revision if the flexibility is built into the permit itself (i.e., various operating scenarios or rules for allowing trading of emissions among different units are expressly set forth in the permit).

The EPA does not believe, however, that section 502(b)(10) is only a mandate to include alternate permitted scenarios in the permit. If a permit includes compliance terms for alternate operating scenarios, a source is simply complying with the terms of its permit when it operates under one or another scenario. If limited to this narrow reading, section 502(b)(10) would be rendered mere surplusage or an unnecessary gloss on a source's obligation under section 502(a) to comply with its permit.

On the other hand, EPA also disagrees with commenters who asserted that section 502(b)(10) authorizes sources to give a 7-day advance notice and then meet their permit limits using an average of all emissions across the "permitted facility," regardless of whether such averaging would be consistent with the underlying requirements of the Act. Nothing in title V or the Act allows permitted sources to violate applicable requirements. If a SIP emission limit applies to each emissions unit at a facility, a title V permit cannot authorize any one unit to violate that emission limit, even if the average emissions across the facility are equal to the emissions that are allowed at the facility under the SIP. As a policy matter, emissions averaging provisions are often complicated to implement and require careful review to ensure that the trading plan allows the same emissions as the otherwise applicable requirements. The EPA believes that a 7-day notice is not a reasonable amount of time to conduct such a review.

The EPA agrees, however, that one policy goal of the Act is to encourage responsible emissions trading plans and to reduce the costs of meeting the Act's requirements. The EPA's regulations implementing section 502(b)(10) are designed to encourage emissions trading as extensively as possible consistent with the requirement that title V permits comply with the applicable requirements of the Act and the need to ensure a reasonable review of the emissions trading provisions established in a permitting process.

Before discussing each of these three elements of EPA's final regulation on operational flexibility, there are provisions in the regulation that are applicable to any method for implementing operational flexibility. The regulations provide that the source must give at least a 7-day advance notice of any change made pursuant to the section 502(b)(10) process. The source, the permitting authority, and EPA must attach a copy of a 7-day advance notice describing the change to their copy of the relevant permit. These notices will be critical for determining how a source is complying with applicable requirements at any time, and therefore must accompany a permit.

Further, no change under this provision can exceed "emissions allowable under the permit." The EPA has defined this term to mean a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including work practice standards) or a federally-enforceable emissions cap that the source has assumed to avoid applicable requirements. This definition clarifies that changes under this provision cannot increase emissions beyond what is provided for by the terms and conditions of the permit.

Nothing in this section is meant to imply any limit on the inherent flexibility sources have under their permits. A permittee can always make changes, including physical and production changes, that are not constrained under the permit. For example, a facility could physically move equipment without providing notice or obtaining a permit modification if the move does not change or affect applicable requirements or federally-enforceable permit terms or conditions. Or a painting facility with a permit that limits the VOC content of its paints can switch paint colors freely as long as each color complies with the VOC limit in the permit.

(c) Changes contravening certain permit terms or conditions, § 70.4(b)(12)(i). As noted above, a federal operating permit is not meant to prevent a source from making changes at the facility that are not constrained by the permit. Accordingly, the Act does not require 7-day notice for such changes under 502(b)(10). The agency believes that the term "changes" in 502(b)(10) is meant to apply to changes at the facility that may contravene the permit. Therefore, the first method for implementing operational flexibility requires each program to allow certain changes at a permitted facility that may contravene specific permit terms or conditions or make them inapplicable. The types of changes that are allowed are limited as discussed below. The program must provide that an owner or operator of a source could give a 7-day notice that it is making a change at the facility. The notice would, among other things, describe the change and identify any permit terms or conditions that would no longer be applicable as a result of the change. If that notice and the change qualify under this provision, the facility owner or operator would not have to comply with the permit terms and conditions it has identified that restrict the change. If it is later proven that the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

Under the regulations, programs must allow "section 502(b)(10) changes" without requiring a permit modification. The regulations define "section 502(b)(10) changes" as those that contravene a permit term, but exclude from this definition any changes that violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. This definition is designed to prevent changes to permit terms that are critical to determining the "emissions allowable under the permit."

An example of how this provision would operate would be a permit in which the federally-enforceable portion specifies a particular brand of coating, along with the emission limit applicable to that coating. This provision would allow the source to change that brand of coating using a 7-day notice. Of course, the new brand must comply with the emission limit.

(d) Emissions trading based on the SIP, § 70.4(b)(12)(ii). The second method for implementing operational flexibility would allow a source to trade emissions within the permitted facility to meet its SIP limits, where the permit does not already provide for such emissions trading but the SIP does. The SIP will identify which provisions allow this type

of operational flexibility. This method would allow a source which had not anticipated needing to trade emissions within the facility to take advantage of emissions trading provisions in the SIP after a 7-day notice without having to modify its permit to include new compliance provisions to enforce the emissions trade. Each permit for a source eligible for such emissions trading would include the applicable SIP emission limits. Upon giving the notice under 502(b)(10), the source could then meet the SIP limits using the applicable trading and compliance provisions approved into the applicable implementation plan. The notice accompanying the permit will then indicate that the source is complying with the implementation plan's trading provisions, rather than the compliance terms set forth in the permit. This mechanism should prove useful to those facilities where emissions trading might provide useful operational flexibility, but the source has not anticipated the need to trade emissions or is not sure enough about its need to warrant writing compliance provisions necessary to implement an emissions trading plan in its permit.

The EPA is not aware of any SIP's that are currently structured to allow sources to opt into an emissions trade based on a 7-day notice, EPA will encourage the States to develop such provisions as part of its efforts to promote market-based regulation under the Act. EPA has already begun to examine the relationship between SIP's and operating permits to identify opportunities for more flexible implementation of the requirements of title I of the Act. To aid the States in implementing this method of operational flexibility EPA will propose, within one year following this rulemaking, guidance for comment on how States may revise their implementation plans to meet these goals. EPA will issue the final guidance within two years.

Any such SIP would have to include compliance requirements and procedures for such trades. As outlined below, these procedures must assure that any such trade is quantifiable, accountable, enforceable, and based on replicable procedures for ensuring the emission reductions that the trading program was intended to provide, including necessary test methods, monitoring, recordkeeping, and reporting. These trading provisions must be specific enough so that any source authorized to use them has a clear method for demonstrating compliance without undergoing a permit revision, but must also be flexible.

Quantifiable: EPA and the State must be able to determine the emissions impact of the SIP requirement or emission limit. SIP's must specify measuring techniques, including test methods, monitoring, recordkeeping and reporting requirements with which to measure the emissions allowed under the trading program and for a compliance determination.

Enforceable: A SIP measure must include clear and unambiguous requirements which apply to the source pursuant to legal authority that States, EPA, and citizens may enforce under the Act. An emission limit must also be enforceable in practice; a regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit.

Accountable: The demonstration of reasonable further progress, attainment, or maintenance for the SIP must account for the aggregate effect of the emissions trades allowed under any such program.

Replicable: SIP procedures for applying the emission trading rules to specific sources should be structured so that two independent entities applying the procedures would obtain the same result when determining compliance with the emission trading provisions. For a SIP trading provision to produce replicable results, the SIP must clearly specify all the variables necessary for determining the baseline emissions for each source, and increases and decreases from that baseline.

The permit shield would not apply to any emissions trades made under the SIP pursuant to a 7-day notice, because the relevant compliance terms and trading provisions would be contained in the SIP, not in the permit. The regulations allow a source to implement non-operational changes, such as changes in monitoring, under this provision. If the emissions trading provisions in the SIP contain compliance provisions for the trading different from the compliance provisions already in the source's permit, the source must comply with the compliance provisions in the SIP rather than those in the permit. To the extent the source chooses to operate under its original permit terms rather than the SIP provision, the source must comply with the compliance provisions in its permit.

(e) Emissions trading under emissions caps, § 70.4(b)(12)(iii). The third method for implementing operational flexibility requires the permitting authority to provide for emissions trading in the permit for the purposes of complying with certain emissions caps. Where the permit establishes a federally enforceable emissions cap that is independent of the applicable requirements, the source may request such emissions trading. For example, to limit the source's potential to emit, a permittee may agree to an emissions cap in its permit that is lower than anything required under the SIP or other applicable requirements. If the permittee requests it, and proposes replicable procedures adequate to ensure that the emissions trades are enforceable, accountable, and quantifiable under the permit cap, the permitting authority shall include the emissions trading procedures in the permit. The source could then engage in emissions trading following a 7-day notice based on those procedures. Of course, the permit must also include the limitations with which each emissions unit must comply under any applicable requirements and must continue to ensure compliance with all applicable requirements, including the SIP.

If a unit is subject to requirements where the emissions impacts are not readily quantifiable, there is no requirement for the permitting authority to include such units in an emissions trading plan. For example, units subject solely to work practice standards with no quantifiable emissions limit are not likely candidates for such emissions trading plans. Of course, a source may agree to certain federally-enforceable terms or conditions to avoid any otherwise applicable requirement, even though trading under such permit terms or conditions may not be appropriate.

(f) Emission caps and emission allowances. EPA has received comments from several parties expressing concern about how to make changes in permit limits that are more strict than or below the level required in the Act's underlying applicable requirements. The commenters raise two scenarios. One is where the permitting authority sets an emissions limit or cap on an emission unit as a matter of State law. The other is where the source has agreed to make the lower limit or cap federally enforceable to reduce the source's potential to emit as a matter of Federal law.

In the first scenario, EPA wishes to clarify that these regulations do not require a State to use title V procedures to modify emission limits that are based solely on State law and do not implement an applicable Federal requirement. A State is free to establish its own procedures for modifying any such State limits which may be referred to in a title V permit. As explained below, pursuant to § 70.6(b), all permit terms which are not federally

enforceable must be identified as such in the permit.

In the second scenario, it is possible to use the combination of several provisions in these regulations to allow for operational flexibility around federally-enforceable emission limits or caps which are more strict than otherwise required by the Act's applicable requirements. A source may request that the permit provide for emissions trading under § 70.4(b)(12)(iii), as discussed above. For example, a source could structure its permit so that the emissions caps at the permitted facility created a pool of unused emissions under the voluntary limit on the source's potential to emit. The facility could then establish an emissions trading plan in its permit which would allow it to apply those unused emissions at any particular emission unit after a 7-day notice. The permit would contain the compliance provisions necessary to account for the application of emission allowances from this pool.

Obviously, the source may use this pool of emissions allowances to increase its emissions on any unit only as high as allowed by the applicable requirements for that emissions unit, if any. In addition, the source's total emissions must remain below any voluntary limit on its potential to emit. But within those limits, the source could cap its potential to emit, while maintaining the flexibility to shift emissions on short notice.

(g) Batch processors and operational flexibility. Batch processors, such as pharmaceutical or specialty chemical producers, raised particular concerns about operational flexibility under title V. Commenters also raised concerns about flexibility of research and development (R&D) operations. Although EPA is not exempting R&D operations from title V requirements at this time, in many cases States will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located. Under such an approach, the facility would be treated as though it were a separate source, and would then be required to have a title V permit only if the R&D facility itself would be a major source. In response, EPA has provided many opportunities for operational flexibility in these regulations, even beyond the requirements of 502(b)(1). More important, sources can always make changes that are not constrained under the permit. For example, as mentioned above, a facility could physically move equipment without providing notice or obtaining a permit modification if the move does not change or affect applicable requirements or federally-enforceable permit terms or conditions. In addition, the permittee and the permitting authority may craft permits to establish worst-case operational scenarios so that the ability of the source to increase its emissions from actual levels up to the permitted allowable emission limits will be inherent in the emission limits in such operating permits. The permittee can make such increases without submitting a 7-day notice. Also many emission limits are expressed in terms of emission rates, not total emissions. In this case the permit would not limit the production capacity of the facility, as long as it complied with the applicable emission rate.

Moreover, programs must allow certain changes that may contravene permit terms under § 70.4(b)(12)(i). In addition, pursuant to § 70.4(b)(12)(iii) the permitting authority will be required to include in the permit emissions trading provisions requested by the batch processor that are appropriate to comply with an emissions cap established in the permit. Under § 70.4(b)(12)(ii) the source may engage in emissions trading based on the implementation plan. Under § 70.6(a)(9) and (10) the permit must include alternative operating scenarios identified by the source or emissions trading provisions to the extent provided for in the underlying applicable requirements. Finally, these regulations allow a State to authorize "off-permit" operations, as explained in the decision below on § 70.4(b)(14) and (15).

6. "Off-permit" Operations

The permit program may allow changes at a facility that are not addressed or prohibited by the permit terms (so-called "off-permit" changes), provided they meet the requirements of § 70.4(b)(14), described below. Although many commenters challenged the legality of this concept under title V, EPA believes that title V was not intended to prohibit such changes. The Agency continues to believe that section 502(a) allows certain changes at a permitted facility that need not be incorporated into the permit until renewal. Section 502(a) prohibits a source from operating any of certain listed types of sources "except in compliance with a permit * * * *" EPA's view is that it does not violate this prohibition for a source to operate in ways that are neither addressed nor prohibited by the permit. Thus, new §§ 70.4(b)(14) and (15) of the regulations provide that a State may allow a permitted source to make changes that are not addressed or prohibited by the permit, without requiring a permit revision, as long as they are not modifications under any provision of title I, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act.

The EPA is limiting off-permit changes to those that do not constitute title I modifications for legal and policy reasons. Legally, the structure of the statute suggests that title I modifications should not take place entirely outside the permit process. Section 502(b)(10) explicitly excludes title I modifications from the class of changes that can be made without a permit revision. It would be anomalous for the Act to suggest that permits must be modified to reflect title I modifications in one place and then, by inference under section 502(a), allow off-permit changes above title I modification levels to take place without any permit modification. As a policy matter, the Act specifically identifies title I modifications under section 502(b)(10) because they represent significant changes to a facility. Other changes may implicate Federal standards, but title I modifications always do. Therefore, it is not reasonable to allow such modifications to be made outside the title V permit system.

The final regulations make a change in this section, however. EPA has deleted the language in the proposal, at § 70.6(d)(3)(iv), stating that notification to the permitting authority and EPA is not required for changes at the source that are not regulated or prohibited by the permit. After considering the public comments, EPA believes that it is critical that the permitting authority and EPA should receive contemporaneous written notification for these types of changes. This notice will provide a record of activity at the facility without inhibiting the sources ability to make the change. If notification were not required, sources could make substantial changes without notifying the permitting authority or EPA of changes that might implicate Federal requirements. This would defeat one of the purposes of an operating permit system. The final rule also requires the source to keep certain records of these changes. These records may consist of copies of the notices sent to EPA and the permitting authority when the change is made.

One inherent limitation on the changes a source can make under the off-permit concept is that off-permit changes are limited to those activities not "addressed" by the permit. Therefore, off-permit changes cannot

alter the permitted facility's obligation to comply with the compliance provisions of its title V permit, which under § 70.6 will be "addressed" in each permit. Such requirements include monitoring (including test methods), recordkeeping, reporting, and compliance certification requirements.

The regulations clarify that the permit shield under section 504(f) may not extend to changes made in this way. This limitation was clearly stated in the preamble to the proposal [56 FR 21746], but, as several commenters pointed out, was not stated in the proposed regulations.

Finally, the regulations made it clear that a State may choose to prohibit off-permit operations as a matter of State law. EPA believes, however, that off-permit operations are an important source of flexibility under title V. Therefore, the regulations provide that any State prohibition of off-permit operations will not be enforceable as a matter of Federal law under the Act. This means that if a State elects to prohibit off-permit operations, neither EPA nor citizens could enforce against the source for failure to have a Federal title V permit covering the off-permit change. Of course, the underlying requirements of the Act would remain federally enforceable if the off-permit change violates any applicable requirement.

If a State prohibits off-permit activity under State law, the State will likely require the source to use some State procedures to record the off-permit change so that the source's operating permit reflects the off-permit change. Where the State chooses to include off-permit changes in the portion of the permit that is not federally enforceable, the permitting authority must establish procedures which at least provide EPA with notice of the change. Obviously, such changes do not qualify for the permit shield under §§ 504(f) and 70.6(f).

It is possible, however, that States or EPA may conclude that a prohibition on off-permit operations must also be made federally enforceable to ensure that applicable requirements are met. For example, as mentioned above, a marketable permits program may be impossible to administer and enforce if an operating permit is not a complete representation of the permitted facility's emissions. To allow for such innovative uses of the title V permit program to implement the Act, a prohibition on off-permit operations can be made federally enforceable where the SIP or applicable requirement, such as a MACT standard, includes a prohibition of off-permit operations.

Section 70.4(b)(15) makes clear that certain changes to the federally-enforceable terms and conditions of a part 70 permit must go through permit revision procedures. As noted above, changes that are title I modifications cannot be made off-permit.

Also ineligible are changes subject to any requirements of title IV. The EPA believes that the allowance trading system provided for in title IV will not be feasible unless there is an accurate accounting of each source's obligations thereunder in the title V permit.

7. Partial Program Approval

Section 70.4(c) of the proposal contained provisions for approving a program that applies to a limited universe of sources. The proposal mirrored the language in section 502(f) that listed the minimum criteria a program must meet to get approval as a partial program. Several industry commenters said that partial approval for programs that issue permits that do not include all applicable elements should be avoided, since it would cause involvement by multiple permitting authorities and result in confusion. An environmental group commented that partial program approvals may not be legal if they do not cover the entire range of source categories to which title V applies; they would not fulfill all requirements of the Act. Several commenters supported the need for partial program approvals, however.

Approval of partial programs is provided for in section 502(d) and minimum criteria for approval are listed in section 502(f). The minimum criteria in section 502(f) cover title V, title I, title IV as applicable to affected sources, and section 112 as applicable to new sources, major sources, and area sources. Since a partial program can be part of a whole State program, EPA will grant full approval to a partial program only if it meets all the part 70 requirements. The EPA will, however, consider interim approval for partial programs that substantially meet the requirements of part 70.

Clarification is added to § 70.4(c) concerning source-category limited partial programs. A program that only addresses certain source categories based on the jurisdictional limits of a local agency will be approved as a partial program. This partial program approval can be interim if the program does not fully meet, but substantially meets, the criteria for a permitting program. A program that is limited because it does not address certain source categories (for reasons other than geographical jurisdiction of a local agency) will be given only an interim approval and must be modified within the interim approval period to cover all sources and meet all part 70 requirements before full approval can be granted. However, for EPA to grant interim approval to a source-category limited program (other than for geographical reasons), there must be compelling reasons why the State cannot address all sources in the interim. These reasons will be judged on a case-by-case basis.

One State commenter argued that EPA should approve permit programs on a district-by-district basis. The EPA will act on partial programs as they are submitted. The State retains the option to submit several partial programs to meet its obligation to submit a whole part 70 program.

8. Interim Approval of Programs

Section 502(g) of the Act allows interim approval of a State program for up to 2 years if it substantially meets the requirements of title V. Section 70.4(d) proposed six program elements that would be needed for a program to receive interim approval.

Several industry commenters stated that operational flexibility and permit revision procedures should be required aspects of the State's interim program, and that provisions for renewing permits granted under interim approval should also be made. Some State agency commenters, on the other hand, believed that the key elements included for interim approval should be kept to a minimum.

The criteria for allowing interim approvals is designed to provide for viable permits that will not have to be renewed upon full program approval other than when the term of the permit expires. The EPA believes the proposed criteria, with the addition of enforcement, certain operational flexibility provisions, streamlined permitting procedures, alternative operating scenarios, and permit application forms, discussed below, are sufficient to substantially meet the requirements of title V. Other suggested additions to the criteria were considered and only these provisions were judged to be of such importance as to be added.

The program elements that compose the criteria a program must meet to be granted interim approval have been modified to add enforcement authority. Section 70.4(d)(3)(vii) now requires interim programs to have "authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit." Enforcement is an essential element of

any viable permitting program and therefore no program "substantially meets" the elements necessary for an approvable part 70 program without authority to enforce permits and the requirement to obtain a permit. Therefore, civil authority to enforce permit terms and conditions and the requirement to obtain a permit is necessary to qualify for interim approval. The EPA realizes, however, that many States do not currently have the criminal authority or the civil statutory maximum of $10,000 per day per violation required for full approval, and legislative changes will be necessary. Therefore, the civil statutory maximum would not have to be at the $10,000 per day per violation level and criminal authority would not be required until full approval.

The Administrator agrees with industry commenters that the ability to incorporate alternate scenarios into the permit, as well as certain provisions of operational flexibility, are important aspects of the permitting program that should be included in an interim program. In that permits issued under an interim program could be for a full 5-year term, sources would need these important provisions for that period to allow timely response to changes in market conditions. These elements are important minimum elements without which needless permit revisions could be required before changes critically important to the source could be made.

Balanced against this need for flexibility is the concern that States may not be ready to implement certain aspects of § 70.4(b)(12) at the time of an interim submittal. Accordingly, EPA is requiring as a minimum interim program element only the ability to generally implement this section.

The Administrator also agrees that any permit issuance or revision activity under an interim program should be carried out expeditiously. Streamlined provisions for revising permits issued under an interim program could be vital to industry if market conditions dictate that a permit revision is necessary. No specific timeframes are being provided as guidance for meeting this criterion because timeliness of action on permits and permit revisions will depend on the experience of the individual permitting authority and also because processing the first phase of permits could be more difficult due to the initial workload on an agency. The streamlined procedures will be judged on a case-by-case basis when a program submittal is reviewed and interim approval is considered. EPA also believes that an interim program should have application forms to ensure that any permit processing procedures are smoothly implemented.

9. Review of Program

Several groups suggested shortening the period of time allowed for States to resubmit their programs following EPA review and disapproval of the initial program submittal. The proposed regulations in § 70.4(f) allowed 180 days following notice of disapproval by the Administrator or such other time not to exceed 2 years for States to resubmit their programs with corrected deficiencies. The allowance for up to 2 years was proposed only for a situation where legislative changes would be needed and additional time would be required for the changes to be adopted. Several environmental groups endorsed a 180-day period to resubmit a program, stating that the Act at 502(d)(1) allows a period of that length. Two industry commenters indicated that the States should only have 1 year to submit their program revisions following EPA review.

Section 502(d)(1) stipulates that the State has 180 days after EPA notice of disapproval to resubmit a program and does not provide for any longer period. Section 70.4(f) has been revised to reflect only the 180 days and the provision for up to 2 years has been removed to be consistent with 502(d)(1).

10. Program Deficiency Correction

Section 70.4(i)(1) allows 180 days for a program revision when the Administrator finds, sometime after program approval, that a program has inadequate means of implementation or is inadequate in some other way. If the State demonstrates that additional legal authority is necessary to correct the deficiency, the period may be extended up to 2 years. The proposal did not, however, cover program revisions needed due to a change in part 70. This has been added to the final rules so that any program revision which must include additional legal authority necessary to implement a change to the part 70 rules can be accomplished over a period up to 2 years.

11. Confidential Information Submittal

A Federal agency requested that laws for classified or sensitive unclassified information be applied when such information is transmitted to the permitting authority and to EPA for permit review. A State commenter requested that EPA correspond directly with the permittee to get confidential information, and that EPA should not require States to share confidential information. One commenter indicated that State legal authority should not be required to transmit confidential data.

A stipulation is added to § 70.4(j) that a source may be required by the permitting authority to submit confidential information directly to EPA since some States cannot submit such information to EPA. Regardless of whether the submittal is made by the State or the source, the material will be submitted under 40 CFR part 2, which contains EPA's business confidentiality regulations. The regulations contain the requirements material must meet to be considered as business confidential. Qualifying information is entitled to protection under part 2 such that it will not be released to outside parties.

12. Computer-Readable Information

Section 70.4(j)(1) of the regulations addresses availability to EPA of information that is used in the administration of a State program. The final regulation specifies that such information is to be provided, to the extent practicable, in computer-readable files. Such language was not found in the proposal; therefore, no comments were received specifically on this issue. The EPA, however, supports further progress in the computerized exchange of information between itself and State and local agencies, as long as it is cost-effective and streamlines processing for the parties involved. Recent EPA workgroup meetings on data management issues have identified a strong interest on the part of State and local agencies in making their information systems more compatible with those at EPA. Representatives of EPA and permitting authorities alike recognize the potential for future administrative cost savings through well-designed permitting-related computer systems.

E. Section 70.5—Permit Applications

1. Submittal for Preconstruction Review

The proposal stated that any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under title I, part C or the NSR program under title I, part D is subject to the part 70 permit program. The proposal did not address the timing of application submittal for these sources.

The final rule in § 70.5(a)(ii) now states that sources that must meet the requirements under 112(g) or for which part C or D permits are required must submit a part 70 permit application no later than 12 months after operations commence, unless the State requires an earlier submittal date. The final

requirements for section 112(g) will be established in the rulemaking under section 112(g). Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

Section 503(c) of the Act states that an application with a compliance plan shall be submitted not later than 12 months after the date on which the source becomes subject to the permitting program and provides for State discretion in setting the exact deadline. These deadlines should be included in the part 70 program submittal for review and approval by EPA. Section 503(a) states that any source is subject to the permitting program on the later of two dates, the effective date of State's part 70 program approval or when the source is subject to section 502(a). Additionally, section 502(a) states that it shall be a violation for a source to operate without a permit. This implies that a source becomes subject to the operating permit program when operations commence. Therefore, a subject source may wait until 12 months after it begins operation or after State program approval, whichever date is later, to submit its operating permit application, provided that the State has not established an earlier date. Furthermore, section 503(d) allows a source subject to the permit program to operate and not be in violation prior to the time it must submit an application under section 503(c). Since section 503(d) is more specific on this point, it is clear that a source required to have a title I part C or D permit need not submit a part 70 application until after it commences operation or such earlier date as the permitting authority may establish. This prevents the source from being subject to an enforcement action during the 12-month period that it operates before it applies for an operating permit.

2. "Timely" Application Submittal for Permit Renewals

The proposal would have required permit renewal applications to be submitted 18 months prior to permit expiration. Furthermore, the proposal offered two examples where times less than 18 months would be approved by the Administrator (where the State issues permits with terms shorter than 5 years and where the State was required to act on permits in less than 18 months) and stated that in no case would a deadline be approved that was less than 6 months before the permit terms expired.

Several commenters interpreted the proposal to require all applications for permit renewals to be submitted 18 months before permit expiration. There was consensus among industry commenters that an 18-month lead time for submittal of permit renewal applications was too long and would lead to unnecessary application revisions before the permit was issued. Some of these commenters supported a 3–6 month deadline before renewal.

In response to these comments, the EPA states that the proposed regulation never required all sources to submit applications for permit renewals 18 months in advance. In order to ensure that the permit terms do not lapse, the renewal application must be submitted far enough in advance of permit expiration to allow for reissuance. This is consistent with section 502(a) of the Act, which states that a source shall not operate without a permit once it is subject to the permitting program. There is a competing concern in that these applications must be expeditiously processed by the State, consistent with 502(b)(6) of the Act. This concern has been addressed by changing the final regulation to provide permitting authorities the discretion to require renewal applications to be submitted not less than 6 months or more than 18 months before permit expiration. The States are now given flexibility to set these deadlines, but this flexibility is tempered by EPA's ability to audit State programs after approval to determine if permits are being renewed before the permit terms lapse. The States can require sources to submit applications within the time confines provided in the regulation, and it is then up to the States to ensure that the applications are processed and the renewal permits are issued as provided for in their program submittals.

3. Application Completeness Determination

(a) Deadline for States to determine completeness. In § 70.4(b)(6) of the proposed rule, a permitting authority had 30 days to determine whether the application was complete and to send the applicant, in writing, a notice of completeness or incompleteness, or the application would be deemed complete by default. This requirement was proposed by EPA in response to section 502(b)(6) that States have, as a program element, "[a]dequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, * * *".

While many industry commenters supported the 30-day deadline for application completeness determination, several State groups suggested changing provisions for completeness by default to 60 days. States commented that 30 days per application was not long enough to ensure that all permit applications could be reviewed for completeness within the workload of the Agency, especially in light of the initial submittal of applications from all sources within 1 year after program approval. An environmental group interpreted the 30-day completeness determination to weaken the Act significantly by allowing sources to operate with incomplete applications.

Due to these comments and after further study, the Administrator has decided to change provisions for the determination of application completeness by default to 60 days [§ 70.5(a)(1)(iii)]. This result applies to all permitting actions, except for processing minor permit modifications where no completeness determination is required. The EPA believes that a "reasonable" time for this review as required by section 502(b)(6) of the Act is 60 days. This follows the precedents set in the NPDES program and in numerous States for processing permits for existing sources and should afford permitting authorities sufficient time for completeness determinations. Applications for major sources often involve hundreds of individual units and the States may not be able practically to perform this task in 30 days. Allowing a 60-day completeness review time should ensure that the States, especially at program commencement, do not issue blanket notices of incompleteness to permittees, due to an inability to perform this duty. This is important because a State's completeness determination starts the clock as of receipt of the application on any required deadlines for application processing. On the other hand, increasing this review time will prevent the sheer weight of the applications at the beginning of the program from, by default, allowing sources to operate and be shielded from enforcement action with incomplete applciations that the agency has not reviewed.

(b) Submittal of additional information after the completeness determination. The proposal stated that permitting authorities should have reasonable criteria for determining when additional information requested of a source after a determination of completeness must be submitted in order to retain the protection afforded by the timely submittal of a complete application.

Several industry commenters requested the ability to update their applications after the completeness determination but before the permit was issued, especially with reference to the possibility that there would be an extended delay in issuing the permit during the initial 3 year phase-in of the State programs.

In response to these comments and for additional reasons, the Administrator believes that additional information should be provided to the permitting authority to address requirements that become applicable during the period of time after the completeness determination but prior to release of the draft permit. Section 70.5(b) has been changed to require the submittal of this information. Not all information that might change during this period would be required to be submitted by the source; only that concerning new applicable requirements. This new information would not effect the determination of completeness. This information submittal requirement is consistent with the important principle of title V that these permits certainly the source as to its obligations. These applicable requirements would apply to the source regardless of the status of the permit application and regardless of whether a permit has been issued or not. However, for practical reasons, this requirement only extends until the time that the draft permit is issued. After the draft permit is issued but before the final permit is issued, new applicable requirements would have to be inserted by the permitting authority and the protection of the completeness determination would be preserved.

4. Exemptions for Insignificant Activities or Emission Units

The preamble to the proposal solicited comment on the comprehensiveness of the information to be required on application forms. The preamble section on applications was silent as to whether certain activities with emissions at or below certain levels could be exempted from having to be fully described and included in a complete part 70 permit application, although it was mentioned in regard to fee demonstrations in the proposed regulations.

Industry and many State commenters strongly supported the inclusion of provisions for exemptions for insignificant activities, so that the applications would not have to contain unnecessary information. Environmental groups, however, indicated that different exemption levels should be required for different compounds, and the EPA should establish uniform national exemptions for insignificant activities or emission levels.

In the final regulation at § 70.5(c), the Administrator has provided that exemptions for insignificant activities or emission levels can be developed by States individually as part of their part 70 programs, rather than being established on a national basis by EPA. The regulation limits the State's discretion by precluding such exemptions if they would interfere with the determination or imposition of any applicable requirement, or the calculation of fees. Applicable requirement in this context would include any standard or requirement as defined in § 70.2.

Furthermore, the Administrator receives the application to have a list containing information the insignificant activities that are exempted because of size, emissions levels, or production rate. An example might be a boiler which is exempt because it is below a specified size.This list need only contain enough information to identify the activities qualifying for an exemption. This list is important for both the source and the State as it provides information as to what activities are exempted. This list will also be helpful in the event that a future rulemaking results in a new requirement being applicable to the exempted activity, or in the event the State changes its fee structure to charge fees for the previously exempted activity. However, for these exemptions which apply to an entire category of activities, such as space heaters, the application need not contain any information on the activity.

These types of exemptions minimize unnecessary paperwork and reduce the need for sources to conduct analysis of all emissions regardless of the amount involved. Such a position is also supported by the *Alabama Power* decision, where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be *de minimis*. In other words, the Administrator may determine levels below which there is no practical value in conducting an extensive review.

Rather than mandating national criteria for exempting insignificant activities or emission levels for all pollutants, the Administrator is allowing them on a case-by-case basis to be approved during rulemaking for each part 70 permit program. To require one test nationally would ignore several State programs which have already defined workable criteria for insignificant emissions activities. State discretion to apply these exemptions also allows title V to build upon rather than disrupt existing State programs.

In regard to hazardous air pollutants, the EPA is planning a rulemaking to establish exemptions based on insignificant emission levels for modifications under section 112(g), and the exemptions established by a State for such pollutants should not be less stringent than these levels.

5. Ambient Assessment Information

The proposed rule contained discussion on whether ambient impact assessment information should be required on all applications and stated that it should be required by a State in limited circumstances. Ambient impact assessment information here means source-specific data necessary for input to air quality impact dispersion models. Air quality modeling is not typically required for individual sources by the Clean Air Act (i.e., it is normally assumed that no individual source can affect attainment or maintenance of an ambient standard on an area-wide basis).

In the final rule, the definition of applicable requirement in § 70.2 now states that NAAQS standards and visibility and PSD increment requirements under part C of title I are applicable requirements as they apply to temporary sources. Furthermore, this definition affects the requirement in § 70.5(c)(3)(vii) that ambient impact assessment information would be required of temporary sources or any other source where such information is needed to meet an applicable requirement (e.g., regulation to ensure good engineering stack height consistent with section 123 of the Act).

6. Compliance Plans

(a) Compliance plans required of all sources. The proposal required that a compliance plan be submitted at the time of permit application only for sources not in compliance with all applicable requirements. In addition, the proposal stated that a compliance plan should include descriptions of how each applicable requirement will be met, descriptions of the compliance status of each requirement, a schedule of compliance, and a schedule for submission of certified progress reports.

Numerous State, environmental and public interest groups, as well as an association of State and local air pollution control officials, strongly opposed the requirement that compliance plans only be required from sources that are not in compliance and stated that these plans should be required of all sources. On the other hand, numerous industry commenters supported EPA's proposal to require compliance plans only from sources that are out of compliance at the time of permit issuance.

In response to commenters, the EPA has further reviewed the language of the statute and the legislative history, and

agrees that compliance plans containing schedules of compliance are required of all sources as part of the permit application.

Section 503(b)(1) of the Act establishes the requirement that application contain compliance plans and does not distinguish between sources in compliance or out of compliance with applicable requirements. Further evidence for requiring a compliance plan for complying sources is the reference in section 503(b)(1) to a compliance plan as a description of how the source will comply with applicable requirements. Additionally, section 503(c) of the Act clearly states that any person required to have a permit shall submit a compliance plan and an application for a permit.

The legislative history supports this conclusion. While the bill passed by the House required compliance plans from both complying and noncomplying sources, the bill passed by the Senate would have required compliance plans of only those complying sources subject to new requirements. S. 1630, section 352(b). In this regard, the statute reflects the provisions of the House Bill and does not contain the exception in the Senate Bill. It therefore appears that Congress considered and rejected even a limited exemption from the requirement to submit compliance plans for sources in compliance.

The proposal similarly required schedules of compliance only for sources not in compliance with all applicable requirements. As with compliance plans, the final rule requires schedules of compliance of all sources. This result is compelled by the language of section 503(b), which requires that each compliance plan include a schedule of compliance, as well as section 504(a), which states that each permit must contain a schedule of compliance.

However, EPA believes that the language of the statute suggests that schedules of compliance should receive different treatment where they are being applied to requirements for which the source is in compliance. Section 501(3) defines a schedule of compliance as "a schedule of *remedial measures*, including an enforceable sequence of actions or operations, *leading to compliance*" with applicable requirements (emphasis added). The phrases "remedial measures" and "leading to compliance" logically suggest the correction of a situation where a source is not in compliance. Further, it is unlikely that sources in compliance were intended to be subject to enforceable interim measures. In addition, complying sources have already demonstrated an ability to comply with applicable requirements. The EPA believes that it would be burdensome and serve no useful purpose for these sources to submit detailed schedules of compliance.

In the final rule, EPA requires schedules of compliance for sources in compliance with all applicable requirements at the time of permit issuance to contain only a statement that the source will continue to comply with such requirements. With respect to any applicable requirement effective in the future, the schedule of compliance must contain a statement that the source will meet such requirements on a timely basis, unless the underlying applicable requirement requires a more detailed compliance schedule. Similarly, for complying sources, certified progress reports are not required unless detailed compliance plans are required by an applicable requirement. In the final rule, a compliance plan is required to be included in the permit application, but not in the permit, for all sources.

(b) Applicable requirements effective in the future. The proposal required citation and description of applicable requirements, including requirements that become effective during the term of the permit, if such requirement has been promulgated at the time of permit application, but did not discuss such requirements in reference to compliance plans.

Several commenters maintained that failing to address future compliance dates in compliance plans is inconsistent with the Act requirement that SIP's contain such schedules.

The final rule requires that each schedule of compliance must contain information concerning future-effective applicable requirements. Furthermore, the definition of applicable requirement contained in § 70.2 has been modified to clarify that future-effective requirements that have been promulgated or approved by EPA at the time of permit issuance are applicable requirements for purposes of part 70 permits.

The Administrator agrees with commenters that subpart N of part 51 requires that SIP's contain legally enforceable compliance schedules for any requirements (including requirements with future-effective dates) applicable to stationary sources and that, therefore, these requirements are also applicable requirements for purposes of part 70 permits.

7. Compliance Certifications

(a) Content of certifications. The proposed rule stated that, to be considered complete, a permit application must include, among other elements, a compliance certification for all applicable requirements. The proposed discussion in some detail wha' is required of a source to meet these requirements. Commenting on the proposal, industry commenters requested several modifications of, or clarifications to, the compliance certification provisions regarding contents of certifications. The final rule regarding compliance certifications requirements for permit applications has been clarified in response to these comments.

Today's rule imposed two types of compliance certification requirements on part 70 sources. First, in § 70.5(c)(9), every application for a permit must contain a certification of the source's compliance status with all applicable requirements, including any applicable enhanced monitoring and compliance certification requirements promulgated pursuant to section 114 and 504(b) of the Act. This certification must indicate the methods used by the source to determine compliance. This requirement is critical because the content of the compliance plan and the schedule of compliance required under § 70.5(a)(8) is dependent on the source's compliance status at the time of permit issuance.

The second type of compliance certification is imposed by § 70.6(c)(5). This section states that every part 70 permit must contain a requirement for the source to submit a compliance certification at least annually throughout the term of the permit. The contents of this compliance certification are drawn from sections 114(a)(3) and 503(b)(2) of the Act. This certification must: Identify each term and condition of the permit that is the basis for certification; the source's compliance status with that requirement; whether compliance was continuous or intermittent; the method(s) used to determine compliance consistent with the monitoring requirements of § 70.6(a); and such other facts as the permitting authority may require to determine the compliance status of the source. The final rule differs from the proposal in that annual certification is now required with respect to the terms and conditions of the permit; the proposal required certification only with the applicable requirements. This change is necessary to conform to the express requirement of section 503(b)(2).

Each of the above compliance certifications must be certified by a responsible official for truth, accuracy and completeness, consistent with § 70.5(d).

(b) Responsible official for title IV sources. The proposed rule in § 70.5 required all part 70 sources subject to permitting requirements to submit a

complete and timely permit application, certified by a responsible official as to truth, accuracy, and completeness. Some commenters questioned who may certify compliance and requested further information on the term "responsible official."

Title IV contains independent requirements for compliance certification and section 403(26) already defines the term "designated official" as a responsible official designated to represent the owner or operator in matters pertaining to allowances and the submission of and compliance with permits, permit applications, and compliance plans for the unit. The final regulations have been clarified in § 70.2 to allow, but not require, the designated official for affected sources to be the responsible official for all part 70 purposes.

Industry commenters stated that the definition of "responsible official" should allow more latitude for designating a plant manager as a responsible official. In the final rule, the definition of "responsible official" has been expanded to allow for delegation of authority to a plant manager where the delegation has been approved in advance by the permitting authority.

8. The Application Shield

Section 503(d) of the Act provides that once a timely and complete application has been filed, the applicant is shielded from enforcement action for operating without a permit until such time as the permit is issued. Two provisions in the proposed regulations, §§ 70.7(b) (2) and (3), were related to this "application shield" in that they directly concerned the determination of whether a permit application submitted was timely or complete. One provision in the proposal provided a grace period of up to three months to submit applications or additional information requested by the State after the required submittal date. Another provision allowed the shield for timely applications that the permitting authority determined to be incomplete despite a "good faith" effort on the part of the source, provided that the source expeditiously cured the defect.

Several commenters criticized offering the protection of the application shield for late application submittals. The Administrator, upon consideration of these comments and after further study, has decided to delete from the final rule these two provisions, proposed §§ 70.7(b) (2) and (3). The 3 month grace period for submitting a timely application effectively extended the "application shield" to sources that did not submit a timely application, which would have been inconsistent with section 503(c) of the Act. This section does not allow any additional time beyond the deadlines specifically provided. Furthermore, the Administrator now believes that this provision would have violated section 502(a) of the Act by allowing a source to operate without a permit (given that the application shield would not have applied). Similarly, the "good faith" exception to the requirement that only timely and complete applications provide an application shield has been deleted from the final rule. This provision was deleted because it was not required by the statute and because it would have effectively shielded all sources from enforcement action for not submitting a complete application. In this context, a "good faith" determination would be too subjective to provide a clear standard for either industry or the permitting authorities.

F. Section 70.6—Permit Content

1. Applicable Requirements of the Act

Title V requires that operating permits assure compliance with each applicable standard, regulation, or requirement under the Act, including the applicable implementation plan [502(b)(5)(A), 504(a), and 505(b)(1)]. Thus, the permitting authority and EPA should clearly understand and agree on what requirements under the Act apply to a particular source. Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to the provisions of the Act is critical in defining the scope of any permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program. Under section 505(b)(1), EPA must object to permits that fail to assure compliance with the applicable requirements and will look to the available record for clarification as what these requirements should be. The following clarifies the EPA position with respect to several issues regarding applicable requirements.

(a) Requirements with future compliance dates. The proposal defined "applicable requirements" as the substantive requirements arising under other sections and titles of the Act. The definition in the final part 70 regulations clarifies that "applicable requirements" include not only those requirements that are in effect at the time of permit issuance, but also include those that have been promulgated prior to permit issuance and that have future effective compliance dates during the permit term. This furthers the Act's and EPA's goal that the permit embody all relevant requirements applicable to the source.

The EPA recognizes the potential for sources to have to repeat permit issuance procedures where an applicable requirement is promulgated close to permit issuance. This problem is to some extent inherent in any permit program which, like title V, attempts to make the permit the comprehensive document for requirements applicable to the source. Because this problem was not addressed in either the proposal or comments received on the proposal, it will need to be addressed in a revision to the part 70 regulations to be proposed in a future **Federal Register** notice.

The EPA plans to revise part 70 to allow for a system of grandfathering in which requirements promulgated after the close of the public comment period and within a certain time period (EPA intends to solicit comment on a range of from 90 to 150 days after close of the comment period) would not have to be incorporated into the permit prior to issuance. For requirements promulgated within the specified time period, but which the State is not required to include in the permit initially, the permit will need to be reopened pursuant to the requirements of section 502(b)(9). However, if the permitting authority fails to issue the permit within that time period, the permit could be issued after that period only if the applicant certified that no new requirement applicable to the source had been promulgated since the closing of the public comment period.

(b) Section 112(r) accidental release program. The definition of "applicable requirements" was also revised to clarify that requirements of section 112(r) of the Act, regarding the accidental release program, are applicable requirements. This would include any requirement under section 112(r)(7) to prepare and register a risk management plan (RMP). The EPA recognizes, however, that an RMP is not in any sense a "permit" to release substances addressed therein, and that section 112(r) was not intended to be primarily implemented or enforced through title V [112(r)(7)(F)]. The EPA therefore believes it sufficient for purposes of title V to require only that the source indicate in its permit that it has complied with any requirement to register an RMP, or alternatively to

indicate in its compliance plan and schedule of compliance its intent to comply with such requirement The RMP itself need not be included in the title V permit.

(c) NAAQS. The EPA proposed that the NAAQS is a SIP requirement, not an "applicable requirement" for title V permits. In the case of large, isolated sources such as power plants or smelters where attainment of the NAAQS depends entirely on the source, EPA proposed that the NAAQS may be an applicable requirement and solicited comment on this position.

An environmental group commented that excluding protection of ambient standards, PSD increments or visibility requirements as applicable requirements are unlawful and bad policy. It argued that section 504(e) expressly defines "requirements of the Act" as "including, but not limited to, ambient standards and compliance with applicable increment or visibility requirements under part C of title I." Although this provision applies only to temporary sources, the group asserts that it would be anomalous for Congress to impose more comprehensive permit requirements for temporary sources than for permanent sources.

The EPA disagrees with the comment that would apply section 504(e) to permanent sources. Temporary sources must comply with these requirements because the SIP is unlikely to have performed an attainment demonstration on a temporary source. To require such demonstration as on every permitted source would be unduly burdensome, and in the case of area-side pollutants like ozone where a single source's contribution to any NAAQS violation is extremely small, performing the demonstration would be meaningless. Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source. In its final rule, EPA clarifies that the NAAQS and the increment and visibility requirements under part C of title I of the Act are applicable requirements for temporary sources only.

(d) Preconstruction permits under regulations approved or promulgated under title I. This definition was changed in part to clarify that applicable requirements include terms and conditions of preconstruction permits issued pursuant to SIP's and other regulations approved by EPA in formal rulemaking after notice and an opportunity for public comment.

(e) Alternative scenarios and emissions trading. EPA believes that providing for permits with alternative operating scenarios, including emissions trading provisions to the extent provided for in the applicable requirements, will be a critical element of any part 70 program and useful in ensuring the implementation of all applicable requirements. If the permit contains approved alternative scenarios or emissions trading provisions, it will be a more complete representation of the operation at the permitted facility. Moreover, there will be less need for permit modifications to accommodate different operations at the facility. Therefore, EPA is requiring that alternative operating scenarios, including emissions trading provisions provided for in the applicable requirements, identified by the source be included in the permit as part of the mandate in section 502(b)(6) to include "[a]equate, streamlined, and reasonable procedures" for permit actions in these regulations.

Obviously, all such scenarios and emissions trading provisions must comply with the permit requirements of title V and the underlying applicable requirements. Under § 70.6(a)(9) for alternative scenarios, the source must keep a contemporaneous record of any change from one scenario to another. Under § 70.6(a)(10), the permit must assure that emissions trading provisions contain the appropriate compliance provisions required under these regulations. The permitting authority may extend the permit shield to any such scenario or emissions trading provisions, because they are provided for in the permit and the permit will include the compliance terms for those scenarios or trades.

There is an important distinction between the mandate for emissions trading in this provision and the authorization in § 70.6(a)(1)(iii) for permits to establish alternative emissions limits equivalent to SIP limits where the SIP allows for such equivalency determinations. Under § 70.6(a)(10), the State will have developed and EPA will have approved the emissions trading program into the SIP or applicable requirement with the intention that it would allow trading without case-by-case review. The State and EPA would also assure that the SIP or applicable requirement provides replicable procedures to ensure that trades are accountable, enforceable, and quantifiable. Under § 70.6(a)(1)(iii), however, the SIP provision authorizing the alternative emission limits will not necessarily have established in advance the replicable procedures to ensure that the alternative limits are accountable, enforceable, and quantifiable. Section 70.6(a)(1)(iii) requires the permitting authority to establish such procedures in the permit itself as part of a full permit issuance, renewal, or significant modification process. Such alternative limits are not a mandatory part of a permit because it may be impossible to establish for some types of SIP limits equivalent limits that are accountable, enforceable, and quantifiable under replicable procedures. Therefore, the permitting authority must retain the discretion not to include alternate limits in the permit under § 70.6(a)(1)(iii).

(f) Equivalency Determinations. In order to take advantage of the flexibility provided by the title V permit program, EPA has added a provision [§ 70.6(a)(1)(iii)] which allows States to develop alternative emissions limits through the permit program. Under this section, a State may choose to adopt a SIP provision that would authorize sources to meet either the SIP limit or an equivalent limit to be formulated in the permit process. Such a provision would allow a State to build additional flexibility into its SIP program. A permit issued pursuant to such a provision would have to contain the equivalency determination, as well as provisions that assure that the resulting emission limit is quantifiable, accountable, enforceable, and based upon replicable procedures (see discussion above of these terms in the emissions trading context). The permit application must demonstrate that the permit provisions are equivalent to the SIP limit as well as quantifiable, accountable, enforceable, and based on replicable procedures. Consistent with these requirements, States may adopt such SIP provisions for all appropriate SIP requirements or only for specific requirements for which the State determines equivalency determinations are appropriate. The determination of what constitutes an equivalent limit could take place either during the permit issuance or renewal process or as a result of the significant modification procedures. The State retains discretion, subject to EPA veto, to decide if an alternative emission limit is justified in any particular case.

2. Permit Shield

(a) Scope of the permit shield. Section 504(f) of the Act states that, if certain conditions are met, the permit may provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee. This is referred to as the "permit shield." The proposed regulation allows the permitting authority to provide under certain circumstances that a source in compliance with the part 70 permit be considered to be in compliance with

other applicable provisions of the Act. For such a permit shield to be in effect, either the permit must include the applicable requirements of such provisions or the permitting authority must determine that the specified provisions are not applicable to the source. The permit must expressly state that a permit shield exists. A permit lacking such express statement is presumed to have no shield.

Provisions of sections 303 (emergency orders) and section 408(a) of the Act (the acid rain program), are applicable regardless of the existence of a permit shield. The owner or operator of a source is liable for violations prior to or at the time of permit issuance. The source cannot be shielded from the requirement to provide EPA information pursuant to section 114 of the Act.

In support of its proposal, the Agency cited that one of the objectives of the title V permitting program is to create a single document that serves as a comprehensive statement of a source's obligations for air pollution control. Through the use of a permit shield the document may, for a period of time, provide a degree of certainty to the source regarding its obligations. EPA's proposal suggested allowing a broad interpretation of the permit shield. Under this interpretation, a source would be protected from enforcement for noncompliance with any applicable requirement of the Act as long as the source was in compliance with all requirements of the source's title V permit. If the permit had misinterpreted applicable requirements, the source would not be obligated to comply with the correctly interpreted requirements. The source would also be shielded from any newly promulgated Federal requirements until the title V permit was reopened and the requirement(s) were incorporated into the permit.

Other goals of the title V program are to implement the Act and to generate improvements in air quality through the enforcement of existing regulations and the timely implementation of newly promulgated regulations. Thus, a balance must be struck between providing certainty to sources as to which requirements are applicable to them and how these requirements are interpreted, and achieving improvements in air quality. This balance can be achieved by appropriately defining the scope of the permit shield, when a shield expires, and when a permit must be terminated, modified, or revoked and reissued for cause.

The EPA received many comments on the permit shield provision. While industry commenters strongly endorsed the broad interpretation of the permit shield provision, State agency and environmental commenters argued for limits to the permit shield, or the elimination of the permit shield concept altogether. There was a strong opposition to requiring the permit shield as part of the permit content.

In response to comments received, and upon further analysis of the statutory provision at issue, the Administrator has modified the position set forth in the proposal. The EPA has decided to adopt a "narrow" interpretation, under which a source cannot be shielded from applicable regulations, standards, implementation plans, or other requirements promulgated after issuance of a title V permit.

In analyzing the strengths and weaknesses of the competing shield theories, EPA examined both the text and the structure of the statute. Section 504(f) of the Act provides two situations where a shield can be applied to applicable provisions of the Act other than those found in section 502. Section 504(f)(1) of the Act states that the shield can apply if "the permit includes the applicable requirements of such provisions." Section 504(f)(2) of the Act sets forth the other situation where a permit shield may apply: "the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof." It is clear from the language of the Act that only requirements that have been reviewed by the permitting authority and identified as such in the permit can be shielded against. Review by the permitting authority would include a determination of applicability and a determination of the source's obligation(s) under the provision(s). This review includes the opportunity for public participation, EPA veto, and judicial review.

Section 504(f)(1) cannot be the basis for mounting a shield against later-enacted requirements, since such requirements, having not been in existence at the time the permit was issued could not, perforce, have been included in it. A permit cannot contain "applicable requirements" that have not been adopted. The fact that Congress required, in order to shield against a provision, a permit to include all, as opposed to some, requirements of that provision, indicates that Congress intended an identity between what was contained in the permit and the provision shielded against.

If a permit does not qualify for the shield on the grounds that it includes applicable requirements of a provision, as provided under section 504(f)(1), then the only basis for shielding against a provision is pursuant to section 504(f)(2). To qualify under that section, the permitting authority "in acting on the permit application" must make a determination, specifically referring to the provisions at issue, that such provision is not applicable. The permitting authority must specify and refer to the provision. Such a determination cannot refer to a provision not yet in existence. And if it refers to a provision that exists, but is later changed, the determination would not be referring to the later provision, but to its predecessor. Further, this approach would be inconsistent with the intent of providing for public review of determinations of inapplicability. The public could not review a determination of inapplicability of a provision not yet enacted. Section 504(f)(2) of the Act is designed to set down in an authoritative and public fashion the way in which existing legal requirements apply to a source. Section 504(f)(2) is, therefore, not intended to prevent later-enacted requirements from being fully applicable to the source.

In addition to textual obstacles, there exists a powerful structural argument against the broad shield. Put simply, a broad shield would effectively abrogate specific Congressional mandates such as section 112 requirements for implementing MACT standards and would significantly handicap States in their planning for effectiveness of new requirements designed to meet other Congressional goals. In particular, the deadlines for air toxics were the focus of much debate during the amendment process, and Congress gave no indication that it intended EPA to revise these dates by expanding the permit shield. Compliance with new requirements designed to meet NAAQS progress and attainment deadlines would also be haphazard and completely dependent on the happenstance of individual permit issuance. It is inconceivable that Congress, with its overwhelming concern for the timing of requirements in title I, would, with no discussion and no explicitness, have placed such a roadblock in the path of State planning. A permit system that undermines the enforceability of other provisions of the Act would not vindicate Congressional purposes.

The EPA maintains its position that the shield cannot apply to provisions related to title IV of the Act, the acid

rain provisions. As the proposal noted, EPA believes that section 408 bars the permit shield for acid rain requirements [56 FR 21744] (sections 408(a) and 414). The EPA believes that shielding sources from acid rain requirements would disrupt effective implementation of that important new program.

(b) Terms of the permit shield. Industry suggested that the shield extend during the time a permit expires when action on permit renewal is delayed and that the shield should remain in force while a permit is reopened for cause.

State representatives and environmentalists suggested that the permit should be reopened if the permit is found to be in error as the shield cannot exempt a source from an effective provision of the Act. They also suggested that the permitting authority should be allowed to revoke the permit shield if information submitted is found to be false, incomplete or misleading.

The EPA's position is that the application shield applies if the permit lapses and the source has submitted a timely and complete application and there is a delay in issuing the permit renewal. The EPA's position with respect to the permit shield (as it applies to the terms and conditions of the permit) is that this type of shield continues to apply if the permit lapses. Under EPA's interpretation of the shield to exclude later promulgated requirements, these would of course continue to be applicable to the source.

3. Monitoring

Section 504(c) provides that every permit issued under title V shall contain monitoring requirements "to assure compliance with the permit terms and conditions." This statutory provision is implemented through § 70.6(a)(3)(i) of the regulations. If the underlying applicable requirement imposes a requirement to do periodic monitoring or testing (which may consist of recordkeeping designed to serve as monitoring), the permit must simple incorporate this provision under § 70.6(a)(3)(i)(A). If the underlying applicable requirement imposes no such obligation, under § 70.6(a)(3)(i)(B) the permit must require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring) which yields reliable data from the relevant time period that are taken under conditions representative of the source's operations and, therefore, representative of the source's compliance with its permit. Appropriate monitoring or testing may include noninstrumental monitoring or testing techniques such as opacity readings using an EPA approved method. Any monitoring or testing method or procedure approved by EPA for determining compliance may be used to satisfy the requirement of § 70.6(a)(3)(i)(B).

Examples of situations where § 70.6(a)(3)(i)(B) would apply include a SIP provision which contains a reference test method but no testing obligation, or a NSPS which requires only a one time stack test on startup. Any Federal standards promulgated pursuant to the Act amendments of 1990 are presumed to contain sufficient monitoring and, therefore, only § 70.6(a)(3)(i)(A) applies. EPA will issue guidance for public review within eighteen months addressing which applicable requirements contain insufficient monitoring and the criteria EPA will apply in determining the types of monitoring which would satisfy the requirement of § 70.6(a)(3)(i)(B). To the extent that EPA identifies any federally promulgated requirement with insufficient monitoring, EPA will issue a rulemaking to revise such requirement.

In some instances, a recordkeeping obligation will be sufficient to meet the requirement of § 70.6(a)(3)(i). An example would be a VOC coating source which uses complying coatings and relies on no control equipment to meet the applicable SIP limit. For this type of source, an obligation to keep records of and periodically certify and report the contents of all coatings used would be sufficient.

4. General Permits

The proposal reflected the language of section 504(d) of the Act, which allows States to issue a general permit covering numerous similar sources. Sources covered by general permits must comply with all part 70 requirements, including the requirement for submitting a permit application. General permits, however, do not apply to affected sources (acid rain), unless provided for under title IV regulations. The proposal solicited comment as to how the general permit should be applied to specific sources.

Commenters requested that EPA allow more flexibility for general permits and allow States to formulate their own general permit applications and general permits.

The final rule clarifies that once the general permit has been issued after an opportunity for public participation and EPA and affected State review, the permitting authority may grant or deny a source's request to be covered by a general permit without further public participation or EPA or affected State review. The rule further clarifies that this action of granting or denying the source's request will not be subject to judicial review.

The primary purpose of section 504(d) is to provide an alternative means for permitting sources for which the procedures of the normal permitting process would be overly burdensome, such as area sources under section 112. See H.R. 101-490, 101st Cong., 2nd Sess., 350 (1990). This purpose would be substantially frustrated if sources subject to a general permit were required to repeat public participation procedures at the individual application stage, or if each applicability determination were subject to judicial review.

To ensure that the general permit process is not abused, for example, by a source that misrepresents facts in its request for the general permit, this section provides that a source receiving a general permit shall be subject to an enforcement action for operating without a part 70 permit, notwithstanding the permit shield provisions, if the source is later determined not to qualify for coverage under the general permit. The EPA believes that this approach strikes the appropriate balance between the procedural advantages intended by section 504(d) and the need to protect the integrity of the permitting process.

In setting criteria for sources to be covered by general permits, States should consider all of the following factors. EPA may object to general permits that do not meet these factors. First, categories of sources covered by a general permit should be generally homogenous in terms of operations, processes, and emissions. All sources in the category should have essentially similar operations or processes and emit pollutants with similar characteristics. Second, sources should not be subject to case-by-case standards or requirements. For example, it would be inappropriate under a general permit to cover sources requiring case-by-case MACT determinations. Third, sources should be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

Sources, including those emitting air toxics, may also be issued general permits strictly for the purposes of avoiding classification as a major source. For example, if sources above a certain emissions level are subject to stringent requirements, it may be feasible to cover sources below that level under a general permit that has, as its principal requirement, a condition that the emissions level is not exceeded.

Based on preliminary information, EPA intends to develop model general permits for certain source categories. In particular, the Agency is considering development of model general permits for degreasers, dry cleaners, small heating systems, sheet fed printers, and VOC storage tanks.

Individual sources covered under a general permit may be issued an individual permit, or alternatively, a letter, or certification may be used. Provided the individual permit, letter or certification is located at the source, the States need not require that sources also have a copy of the general permit; this can be retained on file at the permitting authority's office or at the source's corporate headquarters in the case of franchise operations. The permitting authority may also determine in the first instance whether it will issue a response for each individual general permit application and may specify in the general permit a reasonable time period after which a source that has submitted an application will be deemed to be authorized to operate under the general permit.

General permits may be issued to cover any category of numerous similar sources, including major sources, provided that such sources meet the criteria set out above. For example, permits can be issued to cover small businesses such as gas stations or dry cleaners. General permits may also, in some circumstances, be issued to cover discrete emissions units, such as individual degreasers, at industrial complexes. Such a unit at an industrial complex can be covered by a general permit if the requirements for a general permit are met and the change is one for which a new permit is appropriate. Where a general permit is issued to a discrete emissions unit at an industrial complex, the requirements of the general permit could be incorporated into the relevant title V operating permit at the next renewal.

5. Emergencies

The proposal did not specifically provide for the handling of emergencies that result in deviations from the terms of the permit. Comments were received requesting that the part 70 regulations make some provision for emergencies or "upsets" caused by the failure of emission control equipment. The EPA believes it is appropriate, consistent with the emphasis in the part 70 regulations on providing sources with adequate operational flexibility, to include such a provision in the final rule.

Section 70.6(g) now provides for an affirmative defense in the case where permit allowables have been exceeded due to an emergency. "Emergency" is in turn defined as a reasonably unforeseeable event beyond the control of the source that requires immediate corrective action to restore normal operation and that is not due to certain factors specified in the rule. To establish the defense, the permittee must prove each of the four factors enumerated in § 70.6(g)(3). Section 70.6(g) is modeled after the NPDES permit upset provision in 40 CFR 122.41.

Courts have held, in the Clean Water Act context, that a NPDES permit must contain upset provisions to account for the inherent fallibility of technology in technology-based standards. See, e.g., *Marathon Oil Co.* v. *EPA* 565 F.2d 1253, 1273 (9th Cir. 1977). Other cases have upheld EPA's decision not to promulgate upset provisions, reasoning that the exercise of enforcement discretion is adequate protection of the permittee's interests. *Corn Refiners Ass'n, Inc.* v. *Costle*, 594 F.2d 1223, 1226 (8th Cir. 1979); *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011, 1056–58 (D.C. Cir. 1978). The idea that technology-based standards should account for the fallibility of technology has been affirmed in the context of New Source Performance Standards under the Act. See, e.g., *Essex Chemical Corp.* v. *Rickelshaus*, 486 F.2d 427 (D.C. Cir. 1973).

EPA believes that the emergency provision of § 70.6(g) is appropriate in order to provide permitted sources with an affirmative defense where an enforcement action is brought for exceedances of technology-based standards due solely to the unforeseeable failure of technology. Implicit in § 70.6(g) is that the affirmative defense will not be available for violations of health-based standards. This is appropriate because such standards, such as NAAQS or NESHAP, are formulated largely without regard to the limits of technology. The EPA believes that to excuse violations of these standards would be contrary to Congressional intent. In *Natural Resources Defense Council* v. *EPA*, the D.C. Circuit held that Congress did not intend to tie water quality-based limitations to the capabilities of any given technology. 859 F.2d 156 (D.C. Cir. 1988). This reasoning is at least as compelling in the context of health-based air quality standards.

This provision for emergencies does not limit the opportunity any permitted source might otherwise have to contact the permitting authority in the event of an emergency. Nothing in these regulations requires the permitting authority to respond to emergencies in any particular manner.

6. Voluntary Limits

Title V permits are an appropriate means by which a source can assume a voluntary limit on emissions for purposes of avoiding being subject to more stringent requirements. Section 70.6(b)(1) has been revised to clarify that such terms and conditions assumed at the request of the permittee for purposes of limiting a source's potential to emit will be federally enforceable.

The EPA recognizes that sources may wish to limit their potential to emit in this way prior to there being an approved State permit program. For sources of criteria pollutants, a method already exists by which a State preconstruction review program operating permit program approved into a SIP may be used to limit a source's potential to emit. See Final Rule: Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 54 FR 27274, June 28, 1989. However, sources emitting hazardous air pollutants listed in section 112(b), some of which may be subject to regulation prior to approval of State permit programs, may desire an alternate means of limiting their potential to emit hazardous air pollutants. Accordingly, EPA is considering allowing States to use programs approved under section 112(1) as a means of developing federally-enforceable limits on the potential to emit section 112(b) pollutants. Implementing this concept will require the resolution of many issues more appropriately addressed in the forthcoming guidance issued pursuant to section 112(1)(2).

Several commenters urged the Agency to adopt a simple procedure to allow sources voluntarily to restrict their potential to emit so as not to become subject to title V permitting obligations. As noted in the proposed rule, such a restriction must be federally enforceable in order to serve this purpose. In response to the concerns raised by these commenters, EPA has structured the final rule to provide several simple mechanisms that will allow sources to adopt federally-enforceably restrictions on their potential to emit. First, as discussed above, a restriction adopted under an existing State preconstruction review or operating permit program that has been approved into a SIP will be sufficient for this purpose. State programs approved under section 112(l) may also be available as methods to limit a source's potential to emit. In addition, as discussed above, States may issue general permits to sources

strictly for the purpose of allowing those sources to avoid classification as a major source. The EPA recognizes that it seems somewhat counterintuitive to rely on a general permit to relieve a source of other permitting obligations. However, EPA believes that general permits will provide a simple, straightforward mechanism for sources to adopt federally-enforceable restrictions on their potential to emit and therefore avoid more burdensome permitting obligations.

G. Section 70.7—Permit Issuance, Renewal, Reopenings, and Revisions

1. Permitting Authority's Action on Permit Application

Under § 70.7(a)(5), the permitting authority, in acting on a permit application, must transmit to EPA (and others upon request) a statement setting forth the legal and factual basis for the permit conditions included in the draft permit. Conversely, should the permitting authority deny the permit application, it should prepare a statement of the grounds for denial.

2. Permit Revisions

(a) General. The EPA proposed that the statutory language in section 502(b)(6) leaves substantial discretion to the States to devise appropriate procedural schemes for making expeditious revisions to permits, including "fast-track" procedures to facilitate operational flexibility. As a matter of policy, EPA encouraged (but did not require) States to implement minor permit review procedures for changes that result in emission increases above permit allowables, but that are not title I modifications and do not violate any applicable Federal requirements, as long as such procedures include at least 7 days advance notice to the permitting authority and the Administrator. After waiting the required 7 days, the source could make the change unless the permitting authority objected to the noticed change within the 7 day period. If the permitting authority did not object to the change as a minor permit amendment, it would have 60 days from receipt of the notice to revise the permit.

The EPA proposed to review proposed State procedures for revising permits in conjunction with EPA's review of the State program. The basic test would be whether a State's procedural system, taken as a whole, could assure that the national ambient air quality standards and other substantive requirements of the Act would be maintained and enforceable. The EPA then solicited general comment on what criteria would be appropriate for EPA to use in approving State procedures for revising permits.

Industry commenters supported proposed § 70.7(f), the "minor permit amendment" provision. They stated that this provision is necessary to accommodate inevitable, but unforeseeable, changes in production and to compete successfully in international markets.

State commenters, on the other hand, noted that § 70.7(f) appeared to violate section 502(b)(6), which requires public notice and an opportunity for judicial review. These commenters also stated that it would be impossible to resolve any issues within the 7-day period, or to give an adequate review within the allotted time frame. A national group of State and local agencies suggested that if the minor permit amendment remains, EPA should set a specific *de minimis* threshold of 5 tons or 20 percent of the major source cut-off, which is more stringent.

Environmental groups argued that the law clearly requires public comment and agency review, and opportunity for judicial review for permit revisions. They argued further that a permit whose terms can be changed at will by the source is not enforceable, which violates the basic requirement of title V that permits be enforceable.

Section 70.7(f) as proposed appeared to authorize a source, in a very expedited process, to make changes resulting in an increase in emissions above the emissions allowable under its permit, provided that the changes did not constitute modifications under title I, merely upon providing a 7 day notice to the permitting authority and EPA. It is not entirely clear from the proposal as written whether EPA intended the 7 day notice to the permitting authority and EPA to be merely a necessary, as opposed to a necessary and sufficient, requirement. There is some dissonance between the text of the proposed regulation and the preamble, which expresses uncertainty about what additional procedures may be required for an approvable "procedural system" for fast-track revisions, and solicits comment on the appropriate criteria for EPA to use in approving State revision procedures [56 FR 21747].

For the reasons set out in detail below, the Administrator is today promulgating a rule that calls for review by the permitting authority, affected States, and EPA before part 70 permits can be revised, but does not require public notice and comment for those permit modifications qualifying for minor permit modification procedures. It bears repeating that title V permitting cannot relax any applicable requirements, including those contained in the SIP. The final part 70 regulations therefore directly address not only those substantial comments that called for a process allowing reasonable time for State review, an adequate opportunity for public comment and a hearing, and an opportunity for EPA and affected State review, but also those who voiced concerns over the ability of a source to rewrite its permit to avoid enforcement.

The EPA's final regulations governing permit revisions balance several, sometimes conflicting, goals of the permit program. First, as explained above, the procedures for revising a permit should provide appropriate opportunities for the permitted source, permitting authority, EPA, affected States, and, where appropriate, the public to determine that the permit faithfully applies the Act's requirements. Second, any revision process must be tailored so that the procedural burdens on the permitted facility and permitting authority are reasonable in relation to the significance and complexity of the change being proposed in the permit. Third, the process must provide permittees with a reasonable level of certainty and ability to plan for change at the facility. Finally, the regulations must be flexible so that States may adapt their existing programs to meet part 70 requirements without unnecessarily displacing procedures that have operated before the advent of the Federal operating permit program.

To accommodate these goals, EPA will allow States to develop different types of review procedures that match the procedural elements to the significance of the change. These options are in addition to the considerable flexibility provided elsewhere in the regulation, which accommodates many types of operational changes without the need for a permit revision. Today's rule suggests two possible approaches that employ the minimum procedures required by the Act for different types of changes. The track for significant changes essentially mirrors the permit issuance process. In this track, the public, the permitting authority, affected States, and EPA will review the revision in the same sequence they will use at permit issuance. The other track, which the Agency has named "minor permit modification procedures," is designed for smaller changes at a facility. Such changes will not involve complicated regulatory determinations. In this track, in certain cases, a source may make a change after notice, but prior to the time

the permitting authority, affected States, and EPA review the revision. The permittee may make a requested change immediately after filing the application.

The minor permit modification procedures set forth the most streamlined process that would be approved by EPA. The EPA would not approve a more streamlined process that did not provide an opportunity for review by the permitting authority, EPA, or affected States.

In each track, EPA has provided the permitting authority, affected States, and EPA an opportunity to review the proposed revision. What distinguishes the two tracks is: (1) Whether public review is required; and (2) the point in the process at which the permittee may make the change after proposing it to the permitting authority. In reviewing comments from industry, it is clear to EPA that industry's primary concern is that quickly changing business conditions require changes in operation on little or no notice. This could not be accommodated by a process of indeterminate length that could delay any decision on even the most routine or noncontroversial changes, despite the permittee's good faith efforts to pursue the revision process. Industry comments do not dispute the fundamental obligation that any permit revision must comply with the applicable requirements, but maintain that the process should not unreasonably delay a decision to allow a facility to comply with the Act under revised permit terms. The minor permit modification procedures are designed to address these concerns within the framework of title V.

(b) Legal basis for minor permit modifications. The issues surrounding whether public notice and procedure are necessary for minor permit modifications proved to be among the most controversial issues raised by the proposal. These issues engendered many comments from affected sources, the States, environmental groups, and others. For these reasons, EPA also sought and received a legal opinion (dated May 27, 1992) from the Department of Justice concerning the extent of EPA's discretion to allow States to adopt procedures allowing minor modifications to permits without public notice and comments.

EPA has carefully considered the issues in light of the public comments received and the opinion from the Department of Justice, and has decided to adopt the reasoning provided by the Department. Briefly, EPA is adopting final rules that allow States to adopt procedures for making minor permit modifications without public notice or comment. There are two alternative bases for this action. First, EPA believes that the statute and legislative history can be properly construed to allow such an approach, and second, this approach can also be based upon the general judicial doctrine that permits *de minimis* departures from statutory requirements.

(i) Statutory Construction. The Supreme Court established a two-step approach to analyzing such legal questions in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). The first inquiry is whether Congress has "directly spoken to the precise question at issue." *Id.* at 842. This standard is exacting: It requires a "clear indication of Congress' intent with respect to the precise issue at hand." *Natural Resources Defense Council* v. *EPA*, 859 F.2d 156, 201 (D.C. Cir. 1988). If there is such a clear indication, that ends the analysis because a court "must give effect to the unambiguously expressed intent of Congress," as revealed through application of the traditional tools of statutory construction. *Chevron*, 467 U.S. at 842–43 & n.9.

If, however, the statute is silent or ambiguous on the precise question at issue, the reviewing court will determine whether the proposed regulation "is based on a permissible construction of the statute." *Id.* at 843. Under this second step of *Chevron*, the courts must uphold the EPA interpretation provided it is "reasonable and consistent with the statute's purpose." *Chemical Mfrs. Ass'n* v. *EPA*, 919 F.2d 158, 162–3 (D.C. Cir. 1990). Under the second step of *Chevron*, a court will substantially defer to the EPA's exercise of its discretion and will generally confine its analysis to whether the EPA's proposed rule is reasonable and consistent with the statutory scheme of title V. *See Chemical Mfrs. Ass'n*, 919 F.2d at 162–63; *Natural Resources Defense* v. *EPA*, 822 F.2d 104, 117 (D.C. Cir. 1987). Moreover, where the question under step two of *Chevron* involves the formulation of procedures by the Agency, the deference accorded the Agency's decisions is especially broad. *See Chemical Mfrs. Ass'n*, v. *Natural Resources Defense Council*, 470 U.S. 116, 131 (1985). Where the interpretive issue is procedural, the Supreme Court's ruling in *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519 (1978), requires courts to be especially deferential to the agency's interpretation.

In *Vermont Yankee*, the Court articulated the presumption that "[a]bsent constitutional constraints or extremely compelling circumstances the "administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." 435 U.S. at 543 (quoting *FCC* v. *Schreiber*, 381 U.S. 279, 290 (1965), and *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). Subsequently, the Court has made clear that *Vermont Yankee*'s presumption is a reason to grant even more deference to any agency's interpretation of a statute under *Chevron* where the issue ultimately concerns whether administrative action may be taken through particular procedural means. *Chemical Mfrs. Ass'n*, 470 U.S. at 131 (where a dispute involves an argument over the procedural means to be used by the agency, "these are particularly persuasive cases for deference to the Agency's interpretation. Cf. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 543 (1978)."). See American Trucking Assn's v. *United States*, 627 F.2d 1313, 1321 (D.C. Cir. 1980) (Wright, J. (the D.C. Circuit "has repeatedly stated that an agency 'should be accorded broad discretion in establishing and applying rules for * * * public participation"; (ellipsis in original) (citing several cases).

Following the framework established by *Chevron*, the first question is whether Congress has "*directly spoken* to the precise question at issue." *Chevron*, 467 U.S. at 842 (emphasis added).

In the present case it is significant that, while Congress referred to public notice in section 502(b)(6), it did not expressly tie that notice to permit revisions. Section 502(b)(6) requires the EPA to establish "adequate, streamlined, and reasonable procedures" for four elements of any permitting program:

(1) "For expeditiously determining when *applications* are complete,"

(2) "For processing such *applications*,"

(3) "For public notice, including offering an opportunity for public comment and a hearing, and"

(4) "For expeditious review, of *permit actions, including applications, renewals, or revisions*, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law."

42 U.S.C. 7661(a)(b)(6) (emphasis added).

Unlike the other three elements, the "public notice" element—element (3)—

does not indicate to what actions it applies. The text of section 502(b)(6) does not directly tie the "public notice" element to any of the Agency actions referred to in elements (1), (2) or (4). That a procedure for public notice is referred to in element (3) thus does not alone determine the types of actions to which such notice applies: Rather, it could be read simply as a requirement that to the extent public notice and comment are required or provided, the EPA must establish adequate, streamlined, and reasonable procedures for the States to use to obtain public comment. Alternatively, even if one were to consider it unambiguously clear that public comment is necessary for initial permit "applications," the statute remains ambiguous as to whether public notice is necessary for the various permit actions listed in element (4), including not only "applications" but also "renewals" and "revisions". Congress thus did not clearly require public notice and comment for all "permit actions."

Where Congress has required public notice and an opportunity for comment in title V, it has applied the requirement directly to the specified agency action. Subsection (d) of section 504, for example, provides that "[t]he permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources." 42 U.S.C. 7661c(d). See also, e.g., 42 U.S.C. section 7661f(c)(2) ("Upon petition by a source, the State may, *after notice and opportunity for public comment*, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria [for a small business] but which does not emit more than 100 tons per year of all regulated pollutants.") (emphasis added).

Numerous provisions in the Act itself and in other environmental statutes setting forth notice and comment requirements demonstrate that Congress can and does formulate and apply explicit provisions for public comment to particular types of activities. For example, section 169A of the Act requires "notice and opportunity for public hearing" before the EPA may exempt a major stationary source from a retrofit requirement if that source is contributing to visibility impairment. 42 U.S.C. 7491 (b), (c)(1). Similarly, section 165 of the Act requires that construction permits issued for new major emitting facilities be subject to "a public hearing * * * with opportunity for interested persons * * * to appear and submit written or oral presentations on the air quality impact of such source." *Id.* section 7475(a)(2). The Clean Water Act requires the EPA to provide an "opportunity for public hearing" before issuing a pollutant discharge permit, 33 U.S.C. 1342(a)(1), and the Resource Conservation and Recovery Act requires public notice and, if requested, an "informal public hearing (including an opportunity for presentation of written and oral views)" prior to the issuance of any hazardous facility permit, 42 U.S.C. 6974(b)(2).

These examples all reinforce the basic conclusion that if Congress meant to require a comment period for all permit revisions, Congress would have directly so stated. The absence in title V of any explicit provision for public comment on permit amendments suggests that Congress did not intend to require such notice.

We note that the opportunity for judicial review in element (4) is extended to, among others, "any person who participated in the public comment process." It could be argued that this language implies the need for public notice and opportunity for comment in all permitting actions.

However, EPA notes that element (4) established an opportunity for judicial review, not public comment. It would be both awkward and unusual for Congress to specify in such an indirect manner that the public notice and comment element must apply to precise categories of permit actions. Thus we do not think it is plain that element (4) is to be read in conjunction with element (3) as a refinement on the public comment provision. Rather, it can be argued that under element (3), the extent of the public comment process is to be determined by the State permitting agency under guidance from the EPA, see *Natural Resources Defense Council* v. *EPA*, 859 F.2d at 175–76, and the only *clear* statutory imperative governing the EPA's implementation of element (3) is that any procedures for public notice and comment be "[a]dequate, streamlined, and reasonable."

It is not anomalous that judicial review may be available, but notice and comment were not provided. There will be available a record for judicial review that will include the application for minor permit modification filed by the permittee, the proposed permit, the statement of basis for the proposed permit, and the State's final action. Courts will conduct review based on that administrative record, without having to create a new administrative record through trial *de novo*, a result rejected by courts in the past. See generally *Camp* v. *Pitts*, 411 U.S. 138, 141–42 (1973).

EPA has also examined the language and structure of section 505 of the Act. Section 505 of the Act sets forth, *inter alia*, a procedure under which EPA will receive copies of permit applications as well as applications for permit modifications or renewals. See 42 U.S.C. 7661d(a). This section also establishes procedures whereby the EPA may object to the issuance of any permit, *id.* section 7661d(b)(1), and for notice to affected and contiguous States of permit applications and proposed permits received by the EPA. Section 505(b)(2) provides that any person may petition the EPA to veto a proposed permit on the basis of objections raised in "the public comment period provided by the permitting agency." *Id.* section 7661d(b)(2).

The EPA's initial proposal defined "permit modifications" and "minor permit amendment" as separate subclasses of "permit revision." The logical implication of such a distinction would be that minor permit amendments would not be subject to any section 505 review procedures (*e.g.*, 45-day EPA review), which apply to permit applications, "modifications," and renewals. However, if the terms "modification" and "revision" are used interchangeably, then minor permit modifications are modifications within the meaning of section 505(a). The statute, however, is unclear on the question of whether Congress used the terms "modifications" and "revision" interchangeably in title V.

Neither "modification" nor "revision" is defined in title V. Courts presume that "the use of different terminology within a statute indicates that Congress intended to establish a different meaning," *National Insulation Transp. Comm.* v. *ICC*, 683 F. 2d 533, 537 (D. C. Cir. 1982). Interpreting "modifications" as a subset of "revisions," as the EPA proposed rule did, is also consistent with the dictionary definitions of "revise" and "modify." To "revise" is defined generally as to change, amend, alter, or to correct, improve, update. See *Webster's New World Dictionary* 1130 (rev. ed. 1982). Although one dictionary we have examined does define "revise" to mean a "[t]o change or modify," *The American Heritage Dictionary* 1112 (New College ed. 1976) (as in to "revise an earlier opinion"), "modify" is usually defined more narrowly as to limit, regulate, moderate, qualify, change or alter partially, reduce in degree, or make less extreme, severe, or strong. See *Webster's* at 914; *Random House* at 858; *American Heritage* at 844. Accordingly,

EPA believes that the requirements of section 505 do not necessarily apply to permit revisions as distinct from permit modifications.

Even if EPA were to conclude that a minor permit modification constitutes a "permit modification" within the meaning of section 505(a), that would not resolve the question whether section 505 would permit EPA the discretion under the mandate of section 502(b)(6) to create a procedural distinction between permit modifications that involve a title I modification and those that do not. In this regard, section 502(b)(10) expresses Congress's conclusion that changes in a source's operations or practices that (i) do not constitute a title I modification and (ii) do not increase emissions above existing allowables will require no permit revision at all and only minimal administrative review. From this, EPA concluded that the two types of changes identified in section 502(b)(10) are in Congress's view the most important in determining the procedural treatment to be afforded any change affecting permit terms or conditions. And because, under existing regulations, a modification within the meaning of title I will by definition involve emissions increases that trigger the application of new substantive requirements under title I, there would appear to be strong basis for the EPA to require more elaborate procedures for proposed revisions involving title I modifications. Even for minor permit modifications, EPA concludes that it is appropriate to retain the key elements of section 505—the 45 day EPA review and veto opportunity and notice to affected States.

Section 505(b)(2) allows objections to be raised for the first time before the Administrator if "it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period." If the State has provided *no* opportunity for public comment, it would obviously be impracticable to raise objections to the proposed permit modification during the most recent public comment period. Similarly, the petitioner could plainly substantiate a claim that the grounds for objection arose "after such period." Thus, under the section 505(b)(2) parenthetical the public can petition the Administrator regarding minor permit modifications in cases where the permitting authority has not provided for a prior public comment period on the proposed modification. Based on the language of the statute, therefore, it appears that in section 505 Congress, has not "directly spoken to the precise question at issue" so as to foreclose EPA's exercise of discretion. *Chevron*, 467 U.S. at 842.

(ii) Reasonableness of minor permit modification procedures under *Chevron*. The EPA believes the procedures adopted in this rule for minor permit modifications strike a careful balance between the competing statutory goals, set forth in section 502(b)(6), that permit procedures be "streamlined," "expeditious," "adequate," and "reasonable." Further, the approach taken in the final rule is a reasonable and fair accommodation of the comments received both criticizing and supporting the revision procedures in the proposed rule.

EPA received many comments from industry documenting the need to make operational changes expeditiously in response to market demands. For example, comment IV–D–160 stated that the automobile industry must be able to respond quickly to market and technological changes in order to maintain its market share relative to foreign competitors, and that provisions for expeditious permit revisions for minor emissions increases were crucial to this effort.

Certain industries, including the pharmaceutical industry, pointed out that, owing to the multi-purpose nature of both the equipment and processes used, and the wide variety of products produced, the need for adequate operational flexibility and the ability to revise permits expeditiously is of central concern in the design of the operating permits rule. See, e.g., IV–D–132. In fact, some industry commenters asserted that the proposal's minor permit amendment provisions did not go far enough in providing for operational flexibility. See, e.g., IV–D–241 (seven-day waiting period for minor permit amendments could economically weaken many companies).

EPA believes that the procedures for minor permit modifications in the final rule accommodate these industry concerns to the extent possible while maintaining a careful balancing of the above-mentioned statutory goals and preserving the integrity of the permit process. The minor permit modification procedures achieve the goals of being "streamlined" and "expeditious" because they allow States to adopt procedures under which sources may make permit revisions related to operational needs without delay and without the need to submit those revisions to public notice and comment. For changes resulting in increases in emissions below *de minimis* threshold levels set by the permitting authority and approved by EPA, the permitting authority may group these revisions on a quarterly basis for purposes of EPA and affected State review. For changes resulting in emissions increases above these threshold levels (but below title I modification levels) the source may implement the change immediately after filing a complete application, unless the permitting authority establishes a waiting period. In either case, permitting authority, EPA and affected State review may occur after the change has been made.

In contrast to the industry approval of the proposal's minor permit amendment procedures, State and environmental commenters were generally critical of these provisions. A group of Northeastern States (IV–D–192) asserted that seven days was an insufficient period to review a proposed permit revision. An environmental group (IV–D–158) stated that the minor permit amendment provisions would allow sources to increase emissions without legal limit. The general theme of these and similar comments was that, by allowing certain permit revisions to take place without the same public notice and comment procedures required in permit issuance and renewal, the regulations would undermine the effectiveness of the permit program in implementing and enforcing the requirements of the Act.

EPA disagrees with these commenters. Although the final rule allows approval of State programs that omit public notice and comment for certain permit revisions, the various protections associated with minor permit modification procedures assure that these procedures will be "adequate" and "reasonable" and will not undermine the permitting authority's ability to implement and enforce the Act. To begin with, the rule places several significant restrictions on the types of revisions eligible for treatment as minor permit modifications. Among these is the restriction that these procedures not be used for significant changes to existing monitoring, reporting, or recordkeeping requirements. Section 70.7(e)(2)(i)(A)(3). Thus, while operational changes, such as physical plant changes or changes in utilization, that may be necessary to respond to changing market conditions, may be the subject of permit revisions without prior governmental authorization or public notice and comment, significant changes related to a source's compliance regime must undergo full review before being implemented.

Several other protections ensure the adequacy and reasonableness of the minor modification procedures. A minor

permit modification will not be deemed to have issued for purposes of Federal law until EPA has had the opportunity to review the proposed modification for compliance with the Act. Likewise, affected States will have an opportunity to review and comment on proposed revisions and to make their views known to EPA prior to issuance. These governmental review requirements will help ensure that any modification of a permit accomplished through minor permit modification procedures will comply with the Act and the requirements of this part.

The rule provides the source with an additional incentive to comply. The rule provides that the permitting authority may enforce the original permit terms if the source should fail to comply with its proposed terms during the pendency of the minor permit modification.

Even after a minor permit modification has been properly "issued" following review by the permitting authority and EPA, the source remains responsible for compliance with the Act. Revisions effected through minor permit modification procedures do not receive the protection of the permit shield, so the permitting authority, EPA, and private citizens may enforce the applicable requirements and the requirements of part 70 regardless of how the permit has been revised.

Finally, the concern regarding the potential to increase emissions without legal limit under the minor permit modification procedures is misplaced, and is based on a misunderstanding of title V and the substantive requirements of the Act.

As discussed above, title V is primarily procedural, and is not generally intended to create any new substantive requirements. Nor are title V programs required to establish any sort of "cap" on emissions unless derived from a substantive requirement in another title of the Act. The title V permit is intended to record in a single document the substantive requirements derived from elsewhere in the Act. Therefore, in most cases the only emissions limits contained in the permit will be emissions limits that are imposed to comply with the substantive requirements of the Act (including SIP requirements). The permit itself will not impose any sort of independent "cap" on emissions except where requested by the source. This might occur, for example, in order to limit the source's potential to emit through a federally-enforceable mechanism for the purpose of lawfully avoiding substantive requirements of the other titles that would apply in the absence of a cap.

Like the minor permit amendment provisions of the proposed rule, the minor permit modification provisions in the final rule explicitly prohibit changes that would (1) constitute title I modifications, or (2) violate any applicable requirement of the Act. Applicable requirements include MACT standards, NESHAP, RACT limits contained in a SIP, NSPS, BACT, lowest achievable emission rate standards, and work practice standards established pursuant to a SIP, and other Federal requirements (including SIP limits). The minor permit modification procedure cannot be used to exceed any of these limits. It should be pointed out in this regard that the Act implicitly prohibits "stacking" of emissions increases under the minor permit modification procedures. The EPA has long held that stacking is unlawful where it is done for the purpose of improperly evading full permit modification procedures under title I. See, e.g., 54 FR 27274, 27281 (June 29, 1989) (prohibition against use of "sham" minor source permits for purpose of evading major NSR requirements under title I).

It is also worth noting that title I establishes additional substantive limits that would prevent unlimited vertical stacking in specific instances. For example, section 182(c)(6) establishes *de minimis* levels for ozone precursors in serious, severe, and extreme nonattainment areas that limit increases for purposes of title I modifications to 25 tons when aggregated with all other net increases in emissions at the source over the five years preceding the change. Thus, for these areas, there is a cumulative limit of 25 tons that, if exceeded, would trigger a title I modification and would prevent the source from using the minor permit modification procedures for changes above these limits. In other nonattainment areas and in attainment areas, certain increases above prescribed "significance levels" would also be aggregated with all other net increases in emissions at the source within a five-year contemporaneous period. See, *e.g.*, 40 CFR § 52.21(b)(2) and (3).

It bears emphasis that the minor permit modification procedures set forth in the final rule set the minimum standard for an approvable State permit program. States are free to establish permit revision procedures more stringent than those set forth in this rule. The EPA recognizes that most States have already adopted some form of operating permits program and, based on their own experience, have developed different approaches for processing permit revisions. The EPA also recognizes that different States have different environmental concerns. For example, States that have serious nonattainment problems may wish to adopt more stringent review procedures than those that do not. The final rule allows State the flexibility to design permit programs or to adapt their existing programs to meet their individual circumstances, provided the minimum requirements of part 70 are met.

(iii) *De minimis* justification for minor permit modification procedures. The EPA starts from the assumption that, in the context of regulatory statutes there is "virtually a presumption in * * * favor [of *de minimis* exemptions]." *Public Citizen* v. *Young*, 831 F.2d 1108, 1113 (D.C. Cir. 1987), and they will be inferred "save in the face of the most unambiguous demonstration of congressional intent to foreclose them." *Alabama Power*, 636 F.2d at 357. If such an exemption were statutorily permissible and otherwise valid, it would allow omission of public notice and comment in genuinely *de minimis* cases, even assuming that under step one of *Chevron* the Act unambiguously required public notice and comment for all permit actions.

In *Public Citizen*, the U.S. Court of Appeals for the D.C. Circuit reviewed the law in this area in the context of the "Delaney Clause" of the Color Additive Amendments of 1960, a provision of the Federal Food, Drug and Cosmetic Act (FFDCA) that bars the Food and Drug Administration (FDA) from listing any color additive "found * * * to induce cancer in man or animal," 21 U.S.C. section 376 (b)(5)(B); such FDA listing is a prerequisite for an additive's legal use. The court found that the language, structure, and legislative history of the Color Additive Amendments clearly foreclosed any *de minimis* exemption authority, because, although the cancer risks of the products did indeed appear "trivial," 831 F.2d at 1111, the statute was sufficiently rigid to preclude application of the *de minimis* doctrine. In reaching this conclusion, the court found that "the [statutory] language itself is rigid; the context—an alternative design admitting administrative discretion for all risks other than carcinogens—tends to confirm that rigidity. * * * [T]he legislative history * * * only strengthens the inference." 831 F.2d at 1113.

The language, structure, and legislative history of title V do not indicate that "Congress has been extraordinarily rigid," *Alabama Power*,

636 F.2d at 360–61, precluding the virtual[ ] * * * presumption," *Public Citizen*, 831 F.2d at 1113, that EPA may lawfully seek to frame *de minimis* exemptions from permit review requirements. Accordingly, such exemption authority is available to support a minor amendment procedure.

With regard to the language and structure of title V, a number of provisions are relevant. A modification procedure insulates a source that complies with its requirements from liability under section 502(a), which provides that "it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter," 42 U.S.C. section 7661a(a). This prohibition is similar to that set out in section 165(a) of the Act, the provision at issue in *Alabama Power* ("No major emitting facility * * * may be constructed unless a permit has been issued"). Under title V, Congress nowhere prescribed an inflexible adherence to permit allowables. To the contrary, where the statutory design both contains a prohibition on exceedance of permit limits and authorizes modifications of such limits through procedures that must be both "streamlined" and "expeditious," *id.* section 7661a(b)(6), title V allows an exemption for minor exceedances on the basis of a *de minimis* rationale. Likewise, the legislative history of the relevant statutory provisions and title V as a whole is consistent with this approach.

Given that the statute does not explicitly preclude the crafting of a *de minimis* exemption for minor exceedances of permit allowables, the question remains whether the *de minimis* exemption here satisfies the principle articulated in *Alabama Power* for justification of a *de minimis* exemption that the "burdens of regulation yield a gain of trivial or no value." 636 F.2d at 361. The minor permit modification provisions of this rule comport with this criterion for establishment of a *de minimis* exemption because public review of changes effected through the minor modification track would yield a trivial gain in furthering the ultimate goal of the title V permit, namely, to assure compliance with the requirements of the Act. For the reasons stated below, EPA believes this application of the *de minimis* concept follows directly from the EPA's prior actions to follow the directives of the *Alabama Power* decision.

Central to this conclusion is the rule's limitation that no revision may be processed as a minor modification if it would constitute a title I modification. By regulation, EPA has limited modifications under parts C (prevention of significant deteriorations) and D (nonattainment) of title I to changes that would not increase emissions beyond certain "significance levels." These significance levels, established in response to the *Alabama Power* decision following careful analysis by EPA of the legal and air quality considerations, have never been challenged and remain in effect. *See* 40 CFR § 51.165(a)(1)(x). See also 45 FR 52676 (August 7, 1980). In fact, Congress endorsed this *de minimis* approach in the 1990 Act Amendments. It did so in part by setting specific statutory *de minimis* levels for major modifications in certain areas, and by leaving in EPA's other *de minimis* exceptions undisturbed. See, *e.g.*, sections 182(d)(6) and 182(e)(2). The minor permit modification track is therefore limited to increases in emissions levels long recognized under the Act as insignificant.

Compared to this established exemption from NSR, the minor permit modification procedure in fact presents a stronger case for a *de minimis* exemption from Act requirements for the following reasons. First, as noted above, the *de minimis* exemption for minor permit modifications is taken from a statutory context far more flexible than was the case for the NSR *de minimis* exemption. The statutory provisions in question in *Alabama Power* required that a permit be obtained for any "modification" to a major stationary source. The directive of title V that permit procedures be "streamlined" and "expeditious" indicates the intent to allow far more flexibility in the establishment of revision procedures.

Secondly, the *de minimis* exemption established in response to *Alabama Power* allowed a source to avoid altogether the considerable review requirements associated with NSR under parts C and D of title I. In this case, the exemption is merely from the public notice and comment component of a regulatory review scheme that remains largely intact. Thus, while increases in emissions up to title I significance levels would normally escape governmental and public review entirely under the NSR procedures of parts C and D, the same changes to a title V permit will be reviewed by the State and EPA for compliance with all applicable requirements of the Act.

Moreover, the NSR exemption allows a source to avoid significant substantive requirements, such as the requirement to install technological controls or to obtain emissions offsets from other sources in the area prior to construction. By contrast, the minor permit modification procedure is an exemption from certain procedural requirements only. Any change effected through minor permit modifications must comply with all substantive Act requirements.

EPA received a comment addressing the analysis in the Department of Justice opinion. Although this comment was received very late in the process, it has been carefully considered. In general, the analysis in the Department's opinion speaks for itself. A few specific points merit response, however.

First, the commenter contends that providing an opportunity for judicial review of minor permit amendments without providing also for public notice and comment would require courts to conduct trials *de novo* because there would be no administrative record. However, as noted earlier in this preamble, there will be a record for review, consisting at least of the permit modification application, the proposed permit and statement of basis, and the State's final action.

The commenter also asserted that, while the *de minimis* concept may be appropriate to limit the scope of an agency's authority, it may not find application where an agency seeks to limit the extent of public review of matters already within its jurisdiction. The EPA believes that, to the contrary, the latter case finds more support in judicial precedent establishing authority for *de minimis* exemptions. The primary test of the legal sufficiency of an administratively-created *de minimis* exemption is that the burden of regulation must yield a gain of "trivial or no value." *Alabama Power*, 636 F.2d at 360–361. If a gain of trivial or no value would result from the inclusion of certain activities within the regulatory jurisdiction of an agency, there must similarly be at best a trivial gain when those same activities, once brought within the agency's authority, are merely exempted from requirement to undergo public review. This is precisely the case here, because the same *de minimis* emissions levels established for purposes of exemption from the NSR requirements will serve to limit the changes eligible for processing through minor permit modifications. The present rule therefore presents an even stronger case than the new source review thresholds for application of the *de minimis* principles established in the *Alabama Power* decision, as it has been implemented by EPA for over a decade.

This commenter also asserted that allowing permit terms to be modified

without notice to the general public would frustrate the requirement that permits be enforceable. But contrary to the commenter's claim, nothing in minor modification procedures insulates a source from EPA or citizen enforcement of the modified permit terms or the requirements of the Act. First, any permit that is modified using minor modification procedures will be a matter of public record on file with the permitting authority pursuant to section 503(e) of the Act. Citizens may obtain a copy of any permit, as amended, from the permitting authority or the relevant EPA Region for the purpose of enforcing its terms. Second, today's rule specifically denies the permit shield to changes incorporated into a permit using minor modification procedures. If a citizen believes that a minor permit modification violates the underlying requirements of the Act, the citizen may always seek to enforce the Act's requirements if the source is relying on its modified permit to demonstrate compliance with those requirements of the Act.

The commenter also alleges that EPA provided the public with inadequate notice of its intention to rely on a *de minimis* rationale as a ground for denying public participation on minor permit modifications. On the contrary, the Agency's notice of proposed rulemaking so clearly pointed toward a *de minimis* rationale that the adoption of such a rationale in these final rules can readily be seen as a logical outgrowth of the Agency's proposal. See, *Small Refiner Lead Phase Down Task Force* v. *EPA*, 705 F.2d 506, 547, 549 (D.C. Cir., 1983); *City of Stoughton* v. *EPA*, 858 F.2d 747, 753 (D.C., Cir., 1988). The provision in question called "minor permit amendments" (§ 70.7(f)) in the proposal concerned what emissions increases could be considered sufficiently small that they could be instituted without public participation, an inquiry which covers whether increases are so small as to be *de minimis*. Proposal § 70.7(f) applied if the proposed revision "does not constitute a modification under any provision of title I of the Act". In turn, under the landmark decision of *Alabama Power* v. *Costle*, 636 F.2d 323 (D.C. Cir., 1979), *de minimis* emissions increase may be exempted from consideration as "modifications". Hence, the use of the term modification put the public on notice that *de minimis* was an issue in the rule making. Indeed, the Agency received numerous comments (e.g., IV–D–208, IV–D–312, IV–D–323) that minor permit amendments were justified as *de minimis* under *Alabama Power*. During the comment period, several State groups (IV–D–121, IV–D–232, IV–D–270) and one environmental group (N–D–81) addressed the issue of appropriate *de minimis* thresholds. Finally, the commenter's own comment addressed the *de minimis* issue. In sum, the EPA proposal provided sufficient notice that *de minimis* was an approach that might be adopted as a final outcome in the rulemaking.

(c) Legal basis for section 502(a) exemption. EPA's model regulations outlining an option for minor permit modifications preserve the elements of permitting authority, affected States, and EPA review. They allow a source to make the proposed change after notice, but before the review procedures have been completed. Thus the procedures in effect temporarily exempt the source from the technical requirement of section 502(a) that a source operate in compliance with its permit. The basis for such limited exemption resides in the doctrine of *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357–361 (D.C. Cir. 1979), where the D.C. Circuit set forth "the principles pertinent to an agency's authority to adopt general exemptions to statutory requirements."

In *Alabama Power*, the Court observed that "Unless Congress has been extraordinarily rigid, there is likely a basis or an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." *Id.* at 360–361. Far from being "extraordinarily rigid" with respect to procedures governing permit actions, Congress' intent in title V, as evidenced in section 502(b)(6) and elsewhere, was to establish a flexible standard: procedures for "expeditious review of permit actions" that are "adequate, streamlined, and reasonable". In title V Congress repeatedly demonstrated interest in balancing the need for "expeditious action" by the permitting authority with the need for adequate governmental and public oversight of the permitting process (see, e.g. 502(b)(7), (8)).

The minor permit modification procedures outlined in EPA's regulations allow States to create a highly limited *de minimis* exemption that satisfies the requirements of *Alabama Power*. The Administrator has determined that States could find that requiring review by the permitting authority, EPA, and affected States to take place before a source can make a change qualifying for treatment as a minor permit modification may impose great burdens on industry and State regulatory systems, while any benefit that would accrue would be trivial. The regulations require ample safeguards to ensure that such a temporary exemption (to the formal requirement of compliance with all permit terms while a modification application is pending) is truly *de minimis* in scope and impact.

First, a State could not allow a change to qualify for minor permit modification procedures unless it were less than a title I modification and met certain additional eligibility criteria. These stringent criteria, described in paragraph (c) below, will assure that this procedure is not used for significant changes. Second, the State could not allow a change to be made until after the source filed a complete application for a permit modification.

Third, the State could allow the source to make the change it proposed, but the source must bear the full risk of the consequences if its proposed modification is subsequently disapproved. Moreover, no "permit shield" attaches to any minor permit modification. The only exemption that the source could receive, and it would be a temporary one lasting only until its permit application is processed, is from the technical requirement that the source comply with the existing permit terms that are the subject of the proposed modification. The source would continue to be subject to all applicable requirements, and to those permit terms not addressed by its proposed modification.

If a source chooses to make a change before final action on its proposed modification, and that change is subsequently disapproved, enforcement proceedings may be brought for any violation of applicable requirements resulting from the change. Furthermore, if the source chooses to implement a change prior to issuance of a revision and the permitting authority does not take final action on the application in a timely fashion, the public may have the opportunity under State law to seek a State court order requiring the permitting authority to act finally on the application, and can seek enforcement of the applicable requirements of the Act if it believes the revision violates the Act.

Given these consequences, no source would lightly undertake to make a change while awaiting a permit modification. Emissions resulting from changes that are subsequently disapproved would, moreover, be small and limited in time. Since the permit must issue or be denied in 90 days, the potential for significant illegal emissions increases to occur is negligible. Thus the environmental consequences of this *de minimis* exemption are trivial.

Furthermore, a State might determine that the exemption is desirable because it would free the regulatory system to devote resources to processing significant modifications, without holding up smaller changes with low environmental risk. It would also preserve for the permit modification process the protections of governmental oversight, thereby ensuring the integrity of the permit system without unnecessarily burdening regulatory authorities or regulated industry.

The Administrator concludes that such a *de minimis* exemption is well within his discretion, and comports with the regulatory objectives of title V. A permitting authority may reasonably determine that regulations based on this *de minimis* exemption provide "adequate, streamlined, and reasonable procedures" for permit modifications.

With these tracks, EPA believes it has provided States with an example of adequate, streamlined, and reasonable procedures for handling permit revisions. States may meet their obligation to adopt such procedures using EPA's model or provisions that are substantially equivalent. A State's substantially equivalent procedures need not be identical to EPA's model, nor are the procedures set forth in § 70.7(e) meant to preempt the States from requiring additional process before allowing a change to take effect or before granting a permit revision.

(d) Description of final rule. Following is a description of how the model set forth in § 70.7(e) would work. The model attempts to match the significance and complexity of the proposed revision with the nature and degree of the process required. Changes that qualify for minor permit modification procedures could be made immediately after notifying the permitting authority. Significant changes could not be made until the permitting authority issued the permit modification after review by affected States, the public, and the Administrator.

Criteria for minor permit modification procedures: State programs must include criteria for determining which types of modifications undergo which review process. Today's rule sets forth criteria describing the types of modifications that can be processed on an expedited basis, although States can adopt more restrictive criteria. Under these criteria, State programs cannot use minor permit modification procedures except for modifications that:

(1) Do not violate any applicable requirement;

(2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit (as discussed below);

(3) Do not require or change a case-by-case determination of an emission limitation or other standard (such as a case-by-case MACT determination under section 112(g) of the Act, or equivalency determinations for RACT limits under title I), or a source-specific determination of ambient impacts, or a visibility or increment analysis;

(4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which it would otherwise be subject (as, for instance, a change to a previously established voluntary cap to escape new source review);

(5) Are not modifications under any provision of title I of the Act; and

(6) Are not required by the State program to be processed as a significant modification.

Only insignificant changes in existing monitoring, reporting, and recordkeeping requirements may go through the minor permit modification procedures of § 70.7(e) (2) and (3). An example of an insignificant change in monitoring would be a switch from one validated reference test method for that pollutant and source category to another, where the permit does not already provide for an alternative test method.

The final rule also allows States to process "economic incentives, emissions trading, marketable permits, or other similar approaches" under the minor permit modification process, if the underlying SIP or EPA rule provides explicitly for use of minor permit modification procedures when implementing these types of changes. EPA is providing this form of permit modification for the same reason that it is expanding the use of the operational flexibility provisions for emissions trading: to encourage the use of market-based strategies, and to allow flexibility for processing changes under these programs, consistent with the requirements of title V. The term "other similar approaches" includes other programs that may achieve a similar result as an economic incentive program, a marketable permits program, or an emission trading program, but that may use a different mechanism or approach. This term is meant to allow States to use the minor permit modification process for other programs that may be developed in the future, provided that the underlying requirement explicitly allows for this type of processing. As with similar provisions elsewhere in this rule, future SIP's and EPA rules would have to contain compliance requirements and procedures that would assure that any or all market-based programs are quantifiable, accountable, and enforceable, and based on replicable procedures for determining the emission reductions expected from the program.

Minor permit modification procedures for individual permit modifications. If the source requested the minor permit modification process, the source could make the proposed change while its application was pending. The types of changes that can be made using minor permit modification procedures vary. Thus, it does not make sense to insist that States follow identical procedures in all circumstances, provided that the States comply with the minimum time period specified in these rules. Review by the permitting authority, affected States, and the Administrator could occur concurrently. The permitting authority could then issue (or deny) the permit modification.

A source may request minor permit modification processing of a permit modification by filing a complete application demonstrating that it qualifies for such treatment. The application must also include the source's suggested draft permit. The source may make the proposed change after filing a complete application.

During the pendency of an application for a minor permit modification, a source would receive a qualified exemption from the requirement that it comply with its existing permit terms, but the exemption would be in effect only while the source operates in compliance with its proposed permit terms and conditions. If a source uses minor permit modification procedures to make the change, during the pendency of its application the source need not comply with the existing permit terms and conditions it seeks to modify, but must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. Thus, if a source uses minor permit modification procedures to make such a change, an enforcement action always may be brought to enforce the underlying applicable requirements with respect to the change. Furthermore, if a source violates the proposed permit terms and conditions, it will lose its exemption from complying with its existing permit terms and conditions, and an action enforcing the existing permit terms and conditions may be brought.

The permit shield otherwise allowed under § 70.6(f) cannot be granted to permit terms resulting from minor permit

modifications. Requiring the source to be bound by the underlying applicable requirements irrespective of a minor permit modification helps ensure that providing additional process for minor permit modifications would provide only trivial benefits and provides a limit on the emissions increases available which could occur "stacking."

Within 5 working days of receipt of a complete permit application, the permitting authority must fulfill its obligations under § 70.8(a)(1) and (b)(1) to notify affected States of the requested permit modification and transmit the proposed permit and other necessary documents to the Administrator. For purposes of EPA review and petitions to EPA, the draft permit would be the same as the proposed permit. The permitting authority would have to respond promptly to affected States' recommendations. If EPA objected to a permit modification, then the procedures in § 70.8 of this part would apply.

The final rule requires 45 days for EPA review of and opportunity to veto permit modifications, including those that change the emissions allowable under the permit. The rule also requires that sources comply with substantive conditions and limitations contained in permits that have been issued in accordance with the Act, including those issued as modified permits. Thus permit modifications are subject to the procedures required by § 70.8 for permit issuance. These include § 70.8's requirement that an affected State receive notice and an opportunity to comment on permit modifications.

The permitting authority may not issue a final permit modification until EPA's review period has elapsed without objection or EPA has sent written notice to the permitting authority that it will not object to the modification. However, the permitting authority may approve the modification prior to the time it finally issues the modification. The permitting authority must act within 90 days of receipt of an application for modification, or 15 days after the end of the Administrator's 45-day review period, whichever time is later. This action may include a determination that minor permit modification procedures are inappropriate and that significant modification procedures must be followed (which would terminate the source's ability to operate out of compliance with its approved permit terms and conditions).

In developing State programs, States may also want to provide the permitting authority with the option of issuing a revised proposed permit that would restart EPA's 45-day review period. This would allow the State to make minor changes to the proposed permit without requiring the State to deny an application due to minor errors in the proposed permit, thereby forcing the source to reapply for a permit modification. EPA believes that a source should be allowed to make a change before a modified permit is issued by the permitting authority only if the source bears the risk of making a change that the permitting authority later finds should not have been made.

Group processing procedures. Within the class of changes that can be processed as minor permit modifications, EPA believes that some of these changes are so insignificant that the administrative burdens of individually processing large numbers of such proposed modifications may not be justified. Therefore, the permitting authority may process groups of such modifications together. The group processing procedures basically track the minor permit modification procedures described above, except that the permitting authority could process all eligible modifications on a quarterly basis, or as soon as the aggregate of the source's applications reached the threshold level, discussed below, set in the State program.

Modifications eligible for treatment as minor permit modifications could be processed in a group if they fell below a threshold level approved as part of the State permit program. A State may establish its own threshold levels. However, EPA's regulations suggest the following threshold levels, based on comments from State and local air pollution control agencies with experience implementing permitting programs: 5 tons per year, 20 percent of the major source definition for the area, or 10 percent of the permitted allowable level, whichever is lowest. Many States do not require permits for sources at or below these levels. Moreover, changes below these suggested levels are not likely to trigger new Federal applicable requirements.

The State may establish alternative thresholds if it can justify them based on criteria drawn from the *Alabama Power* decision. The regulations provide the States with guidance for setting appropriate levels, without locking them into a rigid formula. A State's experience under an established program is a good basis for demonstrating that alternate *de minimis* levels will meet the program's goals and legal obligations.

States may also propose alternate *de minimis* levels in response to new regulations which might create unanticipated results under the formula for *de minimis* emission levels described above. For example, section 112(a)(1) allows EPA to establish "lesser quantity" thresholds for certain toxic air pollutants. A fixed percentage of the major source size which yields an appropriate *de minimis* level for a 100-ton per year major sources may not be reasonable when applied to major sources of well less than 10 tons per year. EPA will review such alternate limits according to the same criteria drawn from the *Alabama Power* decision.

The group processing procedures differ in only a few respects from the general procedures for minor permit modifications. Most importantly, the timing of review by the permitting authority, EPA, and affected States is different from that under general procedures for minor permit modifications. Instead of processing applications as soon as the applications are submitted by the source, the permitting authority can collect applications and process them as a group once a quarter. Modifications eligible for group processing would need to be processed more frequently only when the pending applications, in the aggregate, reach the threshold level set by the State. Second, the source would have to notify EPA that it is seeking a modification. Such notice is required because the EPA may not receive notice of the change from the permitting authority for three months.

The source would also be required to submit all forms necessary for the permitting authority to notify EPA and affected States. For purposes of EPA review and petitions to EPA, the draft permit would be the same as the proposed permit. The permitting authority would be required to fulfill its obligation under § 70.8(a)(1) and (b)(1) to notify affected States and transmit information to the Administrator promptly after receipt of the complete application for minor permit modification.

Criteria for significant modifications. Significant modifications are those modifications which do not qualify for treatment as minor permit modifications or administrative amendments. Significant changes to existing monitoring permit terms or conditions, or changes that would relax reporting or recordkeeping requirements would be significant modifications, since these types of changes are likely to affect how the permitting authority determines whether the source is in compliance with emission limitations and other permit terms and conditions. An example of such a change would be a

switch from direct measurement of emissions to fuel sampling and analysis, such as switching from emissions monitoring of SO_2 to sampling and analyzing coal sulfur content. The EPA believes it would be inappropriate for sources to be able to change the method of measuring compliance with its requirements using the minor permit modification procedures. Although EPA recognizes that there are legitimate economic reasons for making some changes quickly, there should be no such urgency for changing existing significant monitoring, reporting, or recordkeeping requirements. Nothing in § 70.7(e)(4)(i) regarding compliance provisions shall be interpreted to prevent sources from making off-permit changes pursuant to § 70.4(b)(14) and (15), or using the operational flexibility provision in § 70.4(b)(12)(ii). When a source takes advantage of these provisions, it may alter its activities to such a degree that its original compliance terms are no longer relevant with respect to the change. A source which makes off-permit changes must comply with any compliance provisions imposed by the applicable requirements that apply to the off-permit change. Similarly, a source that uses the operational flexibility provision of § 70.4(b)(12)(ii) must comply with all compliance provisions imposed by the SIP provision authorizing the operational flexibility. If the source later decides to operate as originally permitted, it must comply with the compliance provisions in its original permit.

Significant Procedures. The EPA has not set forth a specific model for processing significant permit modifications. It is anticipated that the procedures will be very similar to those for processing initial permits or permit renewals. However, most significant modifications should be less complex than initial permits or permit renewals, and the process need only focus on the changes to the permit rather than repeat any more comprehensive permit analysis of the source. Therefore, EPA has required that each State program provide that the majority of significant modification applications are finally issued or denied within 9 months after they are received.

3. Deadline for Action on Applications

Under the Act, the permitting authority is required to act on permit applications, including permit modifications and renewals, within 18 months from receipt of a complete permit application, except for permits for affected sources (acid rain). The proposal did not suggest that shorter deadlines might be appropriate for permit renewals or modifications.

Industry commenters were concerned that 18 months for renewals and modifications is too long and recommended reducing the review period to 4 to 6 months.

The EPA responds that, although section 503(c) of the Act clearly requires an 18-month deadline for action on applications (except during the phase-in transition period), EPA agrees that many permit renewals and modifications could be reviewed in far less time, provided that the conditions and terms of the permit do not lapse.

Thus, the Administrator, consistent with section 502(b)(6), has included several provisions in the final regulations to substantially expedite review of permit modifications [*see* § 70.7(e)]. Furthermore, the Administrator agrees that permit renewals are often so straightforward that they should be reviewed in much less time than 18 months. In discussions with State and local agencies, it is apparent that renewal times of less than 6 months are common except in a few cases. Thus, while EPA cannot require that all renewals occur in a shorter time frame, it strongly encourages States to review 90 percent of renewal applications in under 6 months.

4. Administrative Permit Amendments

An administrative permit amendment would include administrative changes such as correction of typographical errors, changes in address, change of ownership, etc. EPA also proposed to treat as administrative permit amendments any changes that have been processed under an approved State preconstruction review program. The proposal stated that since these changes have already received sufficient EPA review and appear to offer adequate opportunity for public comment and a hearing, EPA believed it would be unnecessary for them to undergo the full permit revision procedure described in section 502(b)(6) simply to incorporate the results of the NSR program.

A number of State agencies recommended that permit requirements issued under State NSR programs should be incorporated into title V permits via the administrative permit amendment process. One group of State agencies suggested that EPA should expand the list of items to be processed as administrative permit amendments to include anything that is obviously approvable.

The EPA has learned, however, that most State preconstruction review programs do not meet title V requirements for review by EPA and affected States. EPA believes that such procedures are required for permit revisions. Thus, EPA will allow States to use the administrative permit amendment procedures to incorporate the results of an EPA-approved State NSR program, if the NSR program is enhanced as necessary to meet requirements substantially equivalent to the applicable part 70 requirements. Changes that meet the requirements for minor permit modifications may be made under procedures substantially equivalent to those in § 70.7(e) (2) or (3). Changes that do not meet the requirements for minor permit modifications must be made under procedures substantially equivalent to those for permit issuance or significant permit modifications. Accordingly, the permit shield may only attach to the latter category of administrative amendments and can not attach until final action has been taken granting the request for the administrative amendment. If a State does not make the necessary improvements to its NSR program, the permit modification process must be used to revise the part 70 permit, as needed.

The primary intent of these "enhancements" of the NSR process is to allow the permitting authority to consolidate NSR and title V permit revision procedures. As stated in the May 10, 1991 proposal, it is not to second-guess the results of any State NSR determination. For example, if a State does provide for EPA's 45-day review in its NSR program, EPA would only be reviewing whether the State had conducted a BACT analysis, if applicable, and whether that analysis is faithfully incorporated in the title V permit. The EPA will not use its review period to object to or attempt to revise the State's BACT determination. Correspondingly, EPA's failure to object to the substance of the BACT determination will not limit any remedies EPA might otherwise have under the Act to address a faulty BACT determination.

The proposed rule allows changes that the permitting authority determines to be similar to those in items (i)–(iv) in § 70.7(d) to be permit revisions for purposes of administrative permit amendments. The EPA has decided to strengthen the proposal by requiring that this list of similar changes be proposed by the permitting authority in its permit program and approved by the EPA. The EPA believes this change is necessary to allow adequate EPA review of these changes to ensure that they are similar to the types of changes defined in items (i)–(iv).

Section 70.7(d)(3)(i) requires the permitting authority to take final action on a request for an administrative amendment to a permit within 60 days of receipt of such request. This 60-day period was intended as a convenience to the permitting authority, not as a waiting period imposed on a source seeking to implement changes qualifying for the administrative amendment track. To clarify this meaning, new § 70.7(d)(3)(iii) provides that a source may implement changes addressed in a request for an administrative amendment immediately upon submittal of the request. Except as discussed above, § 70.7(d)(4) has been revised to clarify that the permit shield may not attach for these changes.

5. Public Participation

Under section 502(b)(6) of the Act, State programs are to have "adequate, streamlined and reasonable" procedures for providing public notice, "including offering an opportunity for public comment and a hearing," of "permit actions, including applications, renewals, or revisions." The EPA proposed that the opportunity for a public hearing can be implemented in an informal manner (e.g. not a full trial-type hearing), such as through open meetings for interested parties to express their concerns. The proposal stated that States were to develop procedures for notice and an opportunity for public comment and a hearing "after considering the requirements of part 124 of 40 CFR."

State agencies commented that the EPA should be careful not to make the public review process unduly burdensome. Environmentalists commented that the EPA should require more specific public comment and hearing procedures, since section 502(b)(6) requires EPA to promulgate minimum elements of a permit program, including "adequate, streamlined and reasonable procedures * * * for public notice, including offering an opportunity for public comment and a hearing."

Although EPA believes that part 124 may provide some useful guidance to States in establishing procedures for public participation, EPA decided that the reference to part 124 was too vague and could have been read to incorporate elements in part 124 that EPA believes are not necessary for title V permits. Therefore, EPA has deleted the reference in the rule to part 124 and has specifically listed the minimum elements of public participation that must be included in a State program.

Section 70.7(h) makes clear that all permit proceedings, except those for minor permit modifications, must provide adequate procedures for public participation. For this purpose, public participation includes: notice, an opportunity for public comment, and a hearing where appropriate. Section 70.7(h) goes on to specify the key elements required in such procedures.

Section 70.7(h)(1) addresses the manner of giving notice, and those to whom it must be given. It provides that notice must be given: By publication in a general circulation newspaper; to all those who request to be included on a mailing list developed by the permitting authority by other means if necessary to assure adequate notice to the affected public.

Section 70.7(h)(2) describes the information that the notice must include, and § 70.7(h)(3) requires notice to be provided to affected states pursuant to § 70.8.

Sections 70.7(h) (4) and (5) contain requirements for the timing of public comment and notice of any public hearing. For initial permit issuance, permit renewals, and significant modifications, the permitting authority must provide at least 30 days for public comment and at least 30 days advance notice of any public hearing.

Finally, § 70.7(h)(6) requires the permitting authority to keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and to make them available to the public.

Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would not in any way be affected by a proposed permit revision would not be germane. Public comments will only be germane if they address whether the draft permit is consistent with applicable requirements or requirements of part 70.

H. Section 70.8—Permit Review by EPA and Affected States

1. 90-day Response Period

Proposed § 70.8(c)(4) allowed 90 days for the permitting authority to make a submittal in response to an EPA objection to issuance of a proposed permit. If the permitting authority submitted a revised permit that only partially met EPA's objection, up to another 90-day period could be granted for the permitting authority to submit a second permit revision meeting EPA's objection. This provision for a second 90-day period is removed from the final rules because the Administrator has determined that section 505(c) of the Act only allows one 90-day period. Although section 505(e) of the Act allows an additional 90-day period, this section applies to reopening permits for cause, not for objections to proposed permits.

Section 70.8(d) provides that where EPA, in response to a public petition, has objected to a permit that has already been issued, EPA will modify, terminate, or revoke such permit. The final rule clarifies that EPA shall do so consistent with the procedures for reopening a permit for cause set forth in § 70.7(g)(4) or (5)(i) and (ii), "except in unusual circumstances." Unusual circumstances would include those where there is a substantial and imminent threat to the public health and safety resulting from the deficiencies in the permit.

2. Permit Continuance

The proposal required permitting authorities to suspend a permit if the Administrator objected to the permit as a result of a public petition under § 70.8(d). Upon further review, EPA now believes that this provision would not meet the requirements section 505(b)(3) of the Act. The final rule states that upon EPA objection as a result of a petition and after the permit is issued, EPA shall modify, terminate, or revoke the permit. The permitting authority can thereafter issue a revised permit meeting EPA's objections. These provisions are as section 505(b)(3) of the Act stipulates and EPA has no discretion to do otherwise.

3. Grounds for an EPA Objection

The proposal allowed EPA to object to a permit if the permitting authority failed to submit necessary information, forms or notices to EPA. The final regulation expands this provision by allowing EPA to object to a permit if the public notice and comment and affected State review requirements (under sections 502(b)(6) and 505(a)(2) of the Act), where applicable, were not met. This is necessary to ensure that permitting authorities meet their obligation under the Act to provide adequate opportunity for public participation and affected State review. The regulations also specify that the Administrator may only object if a proposed permit is not in compliance with the applicable requirements or the requirements of part 70.

I. Section 70.9—Fee Determination and Certification

The requirement that State operating permit programs establish an adequate permit fee schedule is a key prevision of title V. The statute provides that an approvable permit program require sources subject to part 70 to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program [502(b)(3)(A)]. The statute also mandates that all fees required to be collected by a permitting authority under title V must be used solely to support the permit program [502(b)(3)(C)(iii)]. Following is a description of the basis and purpose of the changes in § 70.9.

1. Permit Program Costs

The proposal required States to collect permit fees sufficient to cover most, if not all, of a State's costs of its air pollution control program for stationary sources. After review of public comment and further evaluation of section 502(b)(3) and its legislative history, the Administrator concludes that all air pollution control program costs related to stationary sources need not be recouped through operating permit fees. The rejection of the interpretation in the proposal is based primarily on the fact that the Senate bill would have required recovery of all stationary source air pollution control program costs [S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)], but the Senate bill was rejected by the Conference Agreement in favor of the House bill. Although the Act requires recovery of fewer costs than the Senate bill, it leaves the Agency some discretion in deciding which costs must be recouped.

The proposal was accurate in its conclusion that the fee provisions of title V mandate that the permit fees be collected in sufficient amount to support several air pollution control program activities that are relevant to title V sources and implemented through the operating permit program. This is clear from the list of such activities in section 502(b)(3)(A) of the Act, which includes some activities that are not strictly part of the permitting program, but for which costs related to stationary sources must be recovered. The final rule focuses more upon permit program activities, rather than air program activities more generally, in determining the minimum mandated amount for fee collections. Because the nature of permitting related activities can vary greatly from State to State, the EPA intends toe valuate each demonstration individually using the definition of "permit program costs" in the final regulation.

Finally, it should be noted that title V does not prevent a State from developing a fee schedule that will result in the collection of revenues in excess of those required to support the permit program. The Administrator will consider the use of such funds in reviewing the fee schedules proposed by States.

2. Role of the $25/tpy Presumptive Fee Amount

The proposal highlighted two "tests" ford determining fee schedule adequacy: The "program support test" (the fee schedule would result in the collection of adequate revenues to support all of the specified air program functions) and the "cost-per-ton test" (the $25/tpy presumptive fee minimum). An environmental group objected to this approach, claiming that it might give the incorrect impression that a State program meeting the "cost-per-ton test" would be approvable regardless of whether this amount adequately funded its program.

Although EPA has consistently viewed program support as the true measure of a fee schedule's approvability, the Agency acknowledges that the format of the proposal could have created some uncertainty. For this reason, § 70.9(b) is restructured to indicate that the program support test is the basic measure of fee schedule approvability. Section 502(b)(3)(A) clearly requires that all State programs collect enough in fees to cover their permit program costs.

Section 70.9(b) clarifies that there is a rebuttable presumption that a State fee schedule is adequate if it collects in the aggregate an amount equal to or greater than the presumptive minimum program cost, which is $25/tpy of actual emissions of regulated pollutants (for presumptive fee calculation). The EPA believes that the use of a presumptive minimum amount as a rebuttable presumption that the State is covering its permit program costs is the best way to give meaning to section 502(b)(3)(B) of the Act. A requirement that all State programs prove that their fee schedules recoup their permit program costs without regard for the presumptive minimum amounts an impermissible reading of the Act because it makes section 502(b)(3)(B) meaningless. The Administrator anticipates that this presumption will be most useful during the initial round of program approvals, until permitting programs develop and States and EPA gain greater expertise in estimating program financial needs and fee revenues.

3. "Regulated Pollutants"

The proposal set the presumptive minimum amount that a State must collect to cover its permit program costs as $25/tpy of regulated pollutants actually emitted by part 70 sources the preceding year. The proposal was somewhat confusing as to what pollutants would be considered "regulated pollutants" for this purpose, in part because the proposal used the statutory term "regulated pollutant" for purposes other than calculating the presumptive minimum. To clarify the matter, "regulated air pollutant" was added as a defined term for other than fee purposes, and "regulated pollutant 9for presumptive fee calculation)" was redefined consistent with the Act's definition.

The proposal requested comment on when a pollutant listed in section 112(b) becomes a regulated pollutant for fee purposes. The following three alternatives were set forth: (1) At the time of enactment of the 1990 Act Amendments, (2) when EPA first promulgates a MACT standard for that pollutant, or (3) when a MACT standard for that pollutant first becomes applicable to the permitted source. The proposal adopted the second alternative.

The final rule adopts a slightly modified version of the second alternative, i.e., a pollutant becomes a regulated pollutant (for fee purposes) when EPA first promulgates a MACT standard for that pollutant. In addition, if a pollutant is regulated at a particular source, its emissions will be considered for fee purposes even if a general standard has not been issued. The EPA continues to rely on the rationale in the preamble supporting the second alternative. This alternative is the most reasonable interpretation of the Act and makes the most sense from a policy perspective.

The EPA has also decided to exercise its discretion by excluding from regulated pollutant (for presumptive fee calculation) those substances that would be regulated pollutants only because they are regulated under section 112(r) (the accidental release program). Requiring these substances to be included in calculating the presumptive minimum necessary to cover a State's permit program costs would be administratively difficult and would not significantly increase the presumptive minimum. Because releases of these substances are not permitted and occur accidentally, the amount of

actual emissions from an accidental release may not be knwon—certainly it is unlikely that it would be measured with monitoring equipment. The EPA believes that there will be relatively few substances that are regulated under section 112(r) and not regulated elsewhere under the Act. Additionally, the amount of emissions of such substances are likely to be small enough that they would be insignificant for purposes of calculating the presumptive minimum amount to cover permit program costs.

The proposal was also modified so as to allow States relying on the $25/tpy presumptive minimum to exclude from the calculation insignificant quantities of actual emissions not required to be in a permit application pursuant to § 70.5(c). The EPA could not justify requiring States to include such emissions in the presumptive minimum calculation given the administrative burden of collecting the necessary information for fees purposes, and the insignificant additional fees that a State would be required to collect if these insignificant levels of emissions were included. To the extent that actual emissions must be included in the calculation of the $25/tpy presumptive minimum, they need not be measured using the same methods as might be required to determine whether a source is complying with an underlying applicable requirement.

Section 502(b)(3) provides that States relying on the $25/tpy presumptive minimum must base this computation upon each "regulated pollutant (for presumptive fee calculation)" and defines this for fee purposes only in terms of criteria pollutants (except CO), pollutants regulated under section 111 or 112, and VOC. No exemption is created for such pollutants which a particular source emits but for which the source is not in fact subject to a specific regulatory requirement. On the other hand, no fees are required from other "regulated air pollutants" as defined more expansively in § 70.2 in making the $25/tpy test.

4. Fees From Phase I Acid Rain Sources

The proposal interpreted section 408(c)(40 of the Act as prohibiting EPA, but not the States, from collecting emissions-related fees during 1995 through 1999 from affected sources under section 404. Some industry commenters maintained that this prohibition extends to both States and EPA. After reanalysis of the statutory provision, EPA concludes that the stronger reading is that during 1995 through 1999 section 408(c)(4) precludes EPA and the States from using fees to support a title V program when these fees are related to emissions from affected units under section 404.

It is important to note, however, that States have discretion in how to address utilities. Section 408(c)(4) does not prevent a State from assessing such fees against utilities if the State chooses. The EPA will not, however, consider such emissions-based fees in determining whether the State fee schedule meets the State's obligation to recover permit program costs.

Because of the limitation on fee assessment on affected units under section 404, States relying on the $25/tpy presumptive minimum amount to recover permit program costs shall not be required to include emissions on which they cannot charge a title V emissions fee in their calculation of the presumptive minimum program cost.

5. State Fee Schedules

The final part 70 regulations clarify that States have a great deal of discretion in using the fee schedule to allocate permit program costs among part 70 sources. Even if the State relies on the $25/tpy presumptive minimum, the State fee schedule does not need to assess fees at $25/tpy. The State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof.

It should be clarified that State fee programs can provide for the assessment of fees on the basis of emissions of any regulated air pollutant. The exclusion of three categories of regulated air pollutants (carbon monoxide and certain pollutants regulated under sections 112(r) and 602 of the Act) applies solely to how the $25/tpy presumption with respect to aggregate program revenue adequacy is to be calculated. States electing to assess fees for emissions of any of the regulated air pollutants, including those in the three categories referenced above, are fully authorized to do so. All fee revenues from those programs will be recognized for the purposes of determining program adequacy.

J. Section 70.10—Federal Oversight and Sanctions

I. Geographic Application of Sanctions

The proposal indicated, in accordance with section 502 (d) and (i), that sanctions are applicable if a permitting authority fails to submit an approvable operating permit program or fails to implement an approved program. The proposal did not specify the geographical application of sanctions. State and local agency commenters felt that in the event a partial program for a local agency is granted full approval in a State, the local agency should not be penalized if the State fails to meet its permit program obligations for the remainder of the State. If sanctions are to be applied, they should not be applied in the local agency jurisdiction where a program is adequately being implemented. Conversely, the local agency may be found to not be administering or enforcing its program and be subject to sanctions. The State may have an approved program for the remainder of the area within the State and should not be penalized for failure of the local agency to meet its obligations.

The Administrator agrees with this concern and the stipulation is added to § 70.10 that sanctions are applicable only to the geographic area covered under the program which has not been submitted or is not being adequately administered or enforced. Any other area of the State covered by an approved program that is being adequately implemented will not be affected by sanctions.

2. Discretionary Application of Sanctions

Proposed § 70.10(a)(2) stated that EPA will apply sanctions within 18 months after the date required for program submittal. Section 502(d)(2)(A) states that, where a State has failed to submit a permit program by the required date, EPA has discretion within the first 18 months of that date to apply sanctions. Section 70.10(a)(2) has been corrected to more accurately reflect the intent of the Act. Similarly, § 70.10(b)(3) has been amended to more accurately reflect the intent of section 502(i)(1) that EPA has discretion whether to apply sanctions within the first 18 months after making a finding that a State is not adequately administering or enforcing a program.

3. Withdrawal of Approval of Part 70 Program

Section 70.10(c) sets out criteria for withdrawal of part 70 program approval, such as failure of the permitting authority to enforce the requirements of the part 70 program and the terms and conditions of part 70 permits. The final regulations now add in § 70.10(c)(1)(ii)(E) that failure to act in a timely way on applications for permits, permit renewals, and permit revisions is grounds for withdrawal of approval of the part 70 program. This addition is simply a recognition of the importance and benefits of the permitting program.

If large numbers of permits are allowed to lapse and sources continue to operate without a permit because they have submitted a timely and complete application, or permits are not updated in a timely way to reflect the current status of the source, all the benefits of the permitting program such as increased certainty for sources and enhanced enforcement are lost. Therefore, EPA has added this as a basis for withdrawal of part 70 program approval. The final rule also clarifies that EPA may withdraw a program in whole or in part.

4. EPA Issuance of Initial Permits

The proposal in § 70.10(b)(5) stated that the EPA may issue or deny the permit where the State has failed to act in a timely manner. Upon further review of the language and structure of the Act, EPA has decided to eliminate this provision in the final rule. Where initial permit issuance is concerned, section 502(e) is clear in stating that EPA shall suspend the issuance of permits upon approval of a State program. Where the permitting authority has failed to act in a timely manner on applications for permit renewal, EPA may revoke and reissue the permit as provided for in § 70.7.

K. Section 70.11–Requirements for Enforcement Authority

This section ensures that the basic framework for effective enforcement of title V permits will be in place in each State with an approved part 70 program. Section 70.11 contains specific requirements for enforcement authority consistent with those contained in 40 CFR 123.27 for the NPDES program with appropriate adjustments to conform to the Clean Air Act. No significant changes to the proposed § 70.11 for defining minimum requirements for State programs are contained in the final rules. However, EPA specifically encourages additional enforcement authority with respect to the two areas discussed below.

The EPA encourages State and local permitting authorities to have administrative enforcement authority similar to section 113(d) of the Act, although it is not required by § 70.11. Having administrative enforcement authority in addition to judicial enforcement authority has many advantages. First, administrative cases generally have lower forum costs and are effective for minor or straightforward violations. Reliance on the judiciary for all enforcement actions may cause significant delays in pursuing violations considering how overburdened State and Federal judiciaries are. For both these reasons, more violations may be pursued if the permitting authority has administrative enforcement authority.

The EPA also recommends that State and local enforcement authorities consider as criminal penalties not only fines, but also incarceration. Such a penalty will be an inducement for State law enforcement officials to undertake environmental criminal cases that may be lacking if this type of crime can only result in a fine, which can also be obtained through civil suit. This will enable State enforcement authorities to pursue criminal cases which may otherwise have to be prosecuted by Federal enforcement authorities.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–90–33. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

1. An annual effect on the economy of $100 million or more.

2. A major increase in costs or prices for consumers or individuals industries.

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Although some States already have operating permit programs including fee provisions, the incremental cost of this regulation is not small. The national estimate of incremental annualized cost for the operating permit programs required by section 502(b)(3) of title V exceeds $100 million. Consequently, a Regulatory Impact Analysis has been prepared.

Given the mandate within title V to develop this regulation, the Agency has taken steps to provide for the timely accomplishment of title V requirements. In following the implementation principles mentioned in section II, EPA has allowed flexibility in permit design, in use of general permits to expedite the review process for certain smaller sources, and in the phase-in implementation of certain requirements. The Agency has thus attempted to reduce overall societal cost and any adverse economic impact associated with meeting the environmental objectives of title V. In addition, with permit fee revenue collections from subject sources State and local agencies will have the resources to develop and implement an accountable and enforceable operating permit program.

The draft RIA was made available for public comment as part of the May 10, 1991, proposal. In response to comments received, the RIA was revised to incorporate greater clarity and detail with respect to the numbers of sources affected and costs incurred. Certain costs related to paperwork burdens were increased as a result in both the RIA and the ICR (described below). The new estimate for the annualized direct cost to 34,000 major sources and permitting agencies is $526 million.

This estimate includes some costs that are due to existing State and local regulations, and are not attributable to this rule. It excludes, however, costs associated with permitting 350,000 nonmajor air toxic sources that were included in the Proposed Initial List of Categories of Sources under section 112(c)(1) of the Clean Air Act Amendments. Under today's final rules, States may temporarily defer permit requirements for these sources. The EPA encourages States to issue temporary exemptions. If no such exemptions were granted, and if all of these sources were required to obtain general permits, then the direct cost to sources and permitting agencies would increase by about $79 million annually. Use by the States of specific permits, rather than the general permits that the EPA believes are normally appropriate for these nonmajor air toxic sources, will also raise costs unnecessarily. The EPA estimates that use of specific rather than general permits would at least triple the permitting costs to each source. The EPA projects that if, for example, 25 percent of the nonmajor air toxic sources are not granted deferrals, then actions by the States to require specific rather than general permits would raise cost to sources and permitting agencies by about $68 million annually. Finally, to

the extent that the EPA has underestimated the cost of obtaining specific permits, and to the extent that States require permitting for nonmajor air toxic sources using specific permits (rather than general permits), the direct costs could be increased as much as a billion dollars annually. The EPA encourages States to consider cost differences between specific and general type permits. The EPA recommends that States allow sources to use the type of permit that achieves the requirements of title V at lowest cost. The EPA believes the general permit would normally be appropriate for the nonmajor air toxic sources that are not granted exemptions.

The EPA will soon promulgate a Final Initial List of Categories of Sources under section 112(c)(1) of the Act Amendments. This Final Initial List is expected to reduce the number of nonmajor air toxic sources that must comply with permitting requirements to below 350,000.

The benefits of this rule include more efficient enforcement and greater compliance with emission standards. Greater compliance may result in an improvement in air quality. This rule is not otherwise expected to yield gains in air quality since the rule does not affect ambient air standards or emission standards.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Applicable EPA guidelines for determining whether an RFA is required to accompany a rulemaking package state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses essentially depends upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and record keeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific permitting provisions. This analysis has revealed that without specific mitigation provisions, substantial numbers of small entities may be adversely impacted. Since potential adverse impacts could exist, EPA will use and expects States to use, general permits and deferred applicability of non-major sources to mitigate any such potential impacts. To the extent any remaining significant adverse impacts are probable, the small business assistance program provisions of title V could provide further relief. Consequently, EPA does not believe large numbers of small entities will be adversely affected or will experience disproportionate significant impacts. I hereby certify that this rule as promulgated will not have a significant economic impact on a substantial number of small business entities and thereby does not require an RFA.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), Federal agencies must obtain OMB clearance for collection of information from ten (10) or more non-federal respondents. Each source subject to the requirements for obtaining a title V operating permit will have to submit a permit application and will make periodic compliance reports. These requirements parallel what many sources are already reporting to State and local permitting authorities and what States report to EPA. The effect of these regulations will be to subject more sources to such requirements, primarily those required to obtain a permit due to classification as a major source under the title III air toxics requirements or title I nonattainment requirements. The Act specifies that major sources cannot be exempted from the requirement to obtain a part 70 permit. Their inclusion in the Act is due to the necessity for more effective air quality management throughout the country.

Comments on the proposed Information Collection Request (ICR) were received from two Federal agencies, an industry group, and a research organization. All commenters felt that the cost and burden hour estimates in the proposed ICR were understated. Two commenters specifically identified major activities required of sources and permitting authorities in the permitting process which should be accounted for in the estimates. The need for guidance on general permits was also mentioned by two commenters. The final ICR has been updated to include estimates for two time periods: (1) The first three years (years 1–3) after EPA promulgates the part 70 regulations, as required by the Paperwork Reduction Act; and (2) the following five years (years 4–8), during which initial title V permits will be issued. Estimates for years 4–8 have been provided for informational purposes. EPA will be able to make better estimates of permit issuance costs for years 4–8 after State and local title V programs are reviewed and approved. It should be noted that the proposed ICR only addressed years 4–8, not the first three years after promulgation. Since the Act allows State and local agencies two years after promulgation of EPA regulations to submit programs to EPA, and it allows EPA a year to review and approve such programs, it was assumed in the final ICR that only permitting authorities will experience administration burden during years 1–3.

The analysis of years 4–8 in the final ICR has been updated to respond to comments received. The revised ICR incorporates several additional activities, including activities related to requirements for public notices, public hearings, permit revisions, and permit reopenings. The addition of these new activities, along with additional analysis of burden hour estimates by a group of permitting experts from the private and government sectors, have resulted in increased burden hour and cost estimates for permitting authorities and sources. For years 4–8, total annual cost estimates for permitting authorities have increased from $15 to $160 million, and for sources these estimates have increased from $115 million to $352 million annually. In regard to guidance for general permits, EPA has projects underway to develop model general permits for specific source categories.

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**. The burden to all 112 State and local permitting authorities for this collection of information during the first three years after EPA promulgates the part 70 regulations, is estimated to total 1,944,880 hours equalling an annual average of 5,788 hours per permitting agency. This includes time for rule interpretation, analysis and/or revision to legislative authority, analysis and/or development of regulations, and development of a fee demonstration, standard application form, and a transition plan.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

The information collection requirements contained in 40 CFR part 70 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

Dated: June 25, 1992.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a part 70 as set forth below.

PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.

Authority: 42 U.S.C. 7401, *et seq.*

§ 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, *et seq.*). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.

(b) All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.

(d) The requirements of part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program).

(e) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

§ 70.2 Definitions.

The following definitions apply to part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Applicable requirement means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Designated representative shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.

Emissions allowable under the permit means a federally enforceable permit

term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

The EPA or the Administrator means the Administrator of the EPA or his designee.

Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8 of this part.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 70 permit that meets the requirements of § 70.6(d).

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as "serious," and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM–10.

Part 70 permit or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

Part 70 program or *State program* means a program approved by the Administrator under this part.

Part 70 source means any source subject to the permitting requirements of this part, as provided in § § 70.3(a) and 70.3(b) of this part.

Permit modification means a revision to a part 70 permit that meets the requirements of § 70.7(e) of this part.

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit means the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 70.9(b)(2), means any "regulated air pollutant" except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Whole program means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term "State" does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

§ 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of at least the following sources:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of this Act;

(4) Any affected source; and

(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.* (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, may be exempted by the State from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the

appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 70 program.

(4) Unless otherwise required by the State to obtain a part 70 permit, the following source categories are exempted from the obligation to obtain a part 70 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to part 60, subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 70 sources.* (1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 70 program under paragraph (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 70 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§ 70.4 State program submittals and transition.

(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part. If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant activities or emission levels for purposes of determining complete applications consistent with § 70.5(c) of this part.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific states, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State states and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.

(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits consistent with § 70.6.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

(v) Incorporate into permits all applicable requirements and requirements of this part.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance, certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 115(c) of the Act.

(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part or, if the permit has not already been issued, to § 70.8(d) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Provide that, solely for the purposes of obtaining judicial review in State court for failure to take final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit

revision within the time specified in the State program. If the State program allows sources to make changes subject to post hoc review [as set forth in §§ 70.7(e)(2) and (3) of this part], the permitting authority's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) must be subject to judicial review in State court.

(xii) Provide that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than 90 days after the new grounds for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.

(xiii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(4) Relevant permitting program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program; and

(ii) Relevant guidance issued by the State to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies).

(5) A complete description of the State's compliance tracking and enforcement program or reference to any agreement the State has with EPA that provides this information.

(6) A showing of adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years from the effective date of the program to take final action on the application, as provided for in the transition plan.

(7) A demonstration, consistent with § 70.9, that the permit fees required by the State program are sufficient to cover permit program costs.

(8) A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency shall be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the permit program costs for the first 4 years after approval, and a description of how the State plans to cover those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted, consistent with § 70.5(a)(2), but the State has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:

(i) The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 70.6(f) may extend beyond the original permit term until renewal; or

(ii) All the terms and conditions of the permit including any permit shield that may be granted pursuant to § 70.6(f) shall remain in effect until the renewal permit has been issued or denied.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:

(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;

(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date;

(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 9 months of receipt of the complete application; and

(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.

(12) Provisions consistent with paragraphs (b)(12)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions): *Provided*, That the facility provides the Administrator and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time frame for emergencies. The source, permitting authority, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this requirement of an approvable part 70 permit program:

(i) The program shall allow permitted sources to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within

the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 70.6(f) of this part shall not apply to any change made pursuant to this paragraph (b)(12)(i) of this section.

(ii) The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (b)(12)(ii) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii) of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 70.6 (a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (b)(12)(iii) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(13) Provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications. The program may meet this requirement by using procedures that meet the requirements of § 70.7(e) or that are substantially equivalent to those provided in § 70.7(e) of this part.

(14) If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14) (i) through (iii) of this section. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of paragraphs (b)(14) (i) through (iii) of this section.

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to § 70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under § 70.6(f) of this part.

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

(16) Provisions requiring the permitting authority to implement the requirements of §§ 70.6 and 70.7 of this part.

(c) *Partial programs.* (1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:

(i) All requirements of title V of the Act and of part 70;

(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and

(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b) (1) through (16) of this section.

(3) Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully-approvable whole program.

(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c) of this section.

(d) *Interim approval.* (1) If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may be rule grant the program interim approval.

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall

become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a part 70 program.

(3) The EPA will grant interim approval to any program if it meets each of the following minimum requirements:

(i) *Adequate fees.* The program must provide for collecting permit fees adequate for it to meet the requirements of § 70.9 of this part.

(ii) *Applicable requirements.* The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(iii) *Fixed term.* The program must provide for fixed permit terms, consistent with paragraphs (b)(3) (iii) and (iv) of this section.

(iv) *Public participation.* The program must provide for adequate public notice of and an opportunity for public comment and a hearing on draft permits and revisions, except for modifications qualifying for minor permit modification procedures under § 70.7(e) of this part.

(v) *EPA and affected State review.* The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with § 70.8(c) of this part. The program must provide for affected State review consistent with § 70.8(b) of this part.

(vii) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

(vii) *Enforcement.* The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.

(viii) *Operational flexibility.* The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12) of this section.

(ix) *Streamlined procedures.* The program must provide for streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.

(x) *Permit application.* The program submittal must include copies of the permit application and reporting form(s) that the State will use in implementing the interim program.

(xi) *Alternative scenarios.* The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to § 70.6(a)(9) of this part.

(e) *EPA review of permit program submittals.* Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the **Federal Register**. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.

(1) Within 60 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.

(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time.

(f) *State response to EPA review of program.*—(1) *Disapproval.* The State shall submit to EPA program revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval.

(2) *Interim approval.* The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) *Effective date.* The effective date of a part 70 program, including any partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) *Individual permit transition.* Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program, except that the Administrator will continue to issue phase I acid rain permits. After program approval, EPA shall retain jurisdiction over any permit (including any general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Where EPA retains jurisdiction, it will continue to process permit appeals and modification requests, to conduct inspections, and to receive and review monitoring reports. If any permit appeal or modification request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization for the State to collect appropriate fees, consistent with § 70.9 of this part.

(i) *Program revisions.* Either EPA or a State with an approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations are modified or supplemented. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures.

(1) If the Administrator determines pursuant to § 70.10 of this part that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy. The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as EPA determines to be necessary.

(ii) After EPA receives a proposed program revision, it will publish in the **Federal Register** a public notice summarizing the proposed change and

provide a public comment period of at least 30 days.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.

(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.

(j) *Sharing of information.* (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State submits information to the Administrator under a claim of confidentiality, the State shall submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.

(k) *Administration and enforcement.* Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such program shall be subject to certain Federal sanctions as set forth in § 70.10 of this part.

§ 70.5 Permit applications.

(a) *Duty to apply.* For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

(ii) Part 70 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4) of this part. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 70.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part. The permitting authority may use discretion in developing application forms that best

meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with alternate scenario identified by the source.

(3) The following emission-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to § 70.9(b) of this part.

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3 (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing § 70.4 (b) (12) or § 70.6 (a) (10) of this part.

(8) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time or permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 70.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements. (i)* Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section; and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(d) of this part.

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to

be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part.

(8) *Emissions trading.* A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(b) *Federally-enforceable requirements.* (1) All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part, other than those contained in this paragraph (b) of this section.

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of § 70.5(d) for this part.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 70.5(c)(8) of this part.

(4) Progress reports consistent with an applicable schedule of compliance and § 70.5(c)(8) of this part to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 70.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) *General permits.* (1) The permitting authority may, after notice and opportunity for public participation provided under § 70.7(h) of this part, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the permitting authority for coverage under

the terms of the general permit or must apply for a part 70 permit consistent with § 70.5 of this part. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 70.5 of this part, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 70.7(h) of this part, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield.* (1) Except as provided in this part, the permitting authority may expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 70 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision*—(1) *Definition.* An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

§ 70.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application.* (1) A permit, permit modification, or renewal may be issued only if all of the following condition have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 70.6(d) of this part;

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (2) and (3) of this section, the permitting authority has complied with the requirements for public participation under paragraph (h) of this section;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 70.8(b) of this part;

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) The Administrator has received a copy of the proposed permit and any notices required under §§ 70.8(a) and 70.8(b) of this part, and has not objected to issuance of the permit under § 70.8(c) of this part within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 70.4(b)(11) of this part or under regulations promulgated under title IV of title V of the Act for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.

(3) The program shall also contain reasonable procedures to ensure priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (2) and (3) of this section, the State program need not require a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 70.4(b)(12)(i), and paragraphs (e) (2)(v) and (3)(v) of this section, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a part 70 program. The program shall provide that, if a part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 70.5(a)(2) of this part, the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) The program shall provide that:

(i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance; and

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 70.5(a)(1)(iii) of this part.

(2) If the permitting authority fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(d) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8 of this part that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 70.6 of this part; or

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1) (i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(3) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 70.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 70.6, 70.7, and 70.8 for significant permit modifications.

(e) *Permit modification.* A permit modification is any revision to a part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(1) *Program description.* The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. The State may meet this obligation by adopting the procedures set forth below or ones substantially equivalent. The State may also develop different procedures for different types of modifications depending on the significance and complexity of the requested modification, but EPA will not approve a part 70 program that has modification procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part.

(2) *Minor permit modification procedures*—(i) *Criteria.*—(A) Minor permit modification procedures may be used only for those permit modifications that:

(1) Do not violate any applicable requirement;

(2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(3) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(A) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(B) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

(5) Are not modifications under any provision of title I of the Act; and

(6) Are not required by the State program to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(2)(i)(A) and (e)(3)(i) of this section,

minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application.* An application requesting the use of minor permit modification procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 70.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8.

(iii) *EPA and affected State notification.* Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modification. The permitting authority promptly shall send any notice required under § 70.8(b)(2) to the Administrator.

(iv) *Timetable for issuance.* The permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under § 70.8(c), whichever is later, the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by § 70.8(a) of this part.

(v) *Source's ability to make change.* The State program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(2)(v) (A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield.* The permit shield under § 70.6(f) of this part may not extend to minor permit modifications.

(3) *Group processing of minor permit modifications.* Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(2) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria.* Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(2)(i)(A) of this section; and

(B) That collectively are below the threshold level approved by the Administrator as part of the approved program. Unless the State sets an alternative threshold consistent with the criteria set forth in paragraphs (e)(3)(i)(B) *(1)* and *(2)* of this section, this threshold shall be 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in § 70.2 of this part, or 5 tons per year, whichever is least. In establishing any alternative threshold, the State shall consider:

(1) Whether group processing of amounts below the threshold levels reasonably alleviates severe administrative burdens that would be imposed by immediate permit modification review, and

(2) Whether individual processing of changes below the threshold levels would result in trivial environmental benefits.

(ii) *Application.* An application requesting the use of group processing procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 70.5(d) of this part, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(3)(i)(B) of this section.

(E) Certification, consistent with § 70.5(d) of this part, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8 of this part.

(iii) *EPA and affected State notification.* On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(3)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligations under §§ 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modifications. The permitting authority shall send any notice required under § 70.8(b)(2) of this part to the Administrator.

(iv) *Timetable for issuance.* The provisions of paragraph (e)(2)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(2)(iv) (A) through (D) of this section within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under § 70.8(c) of this part, whichever is later.

(v) *Source's ability to make change.* The provisions of paragraph (e)(2)(v) of

this section shall apply to modifications eligible for group processing.

(vi) *Permit shield.* The provisions of paragraph (e)(2)(vi) of this section shall also apply to modifications eligible for group processing.

(4) *Significant modification procedures*—(i) *Criteria.* Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. The State program shall contain criteria for determining whether a change is significant. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) The State program shall provide that significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 70 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 70.4(b)(10) (i) or (ii) of this part.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The Administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 70 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA.* (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

(h) *Public participation.* Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(3) The permitting authority shall provide such notice and opportunity for participation by affected States as is provided for by § 70.8 of this part;

(4) *Timing.* The permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition

may be granted, and such records shall be available to the public.

§ 70.8 Permit review by EPA and affected States.

(a) *Transmission of information to the Administrator.* (1) The permit program shall require that the permitting authority provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 70 permit. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraphs (a)(1) and (b)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources according to the following:

(i) By regulation for a category of sources nationwide, or

(ii) At the time of approval of a State program for a category of sources covered by an individual permitting program.

(3) Each State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part.

(b) *Review by affected States.* (1) The permit program shall provide that the permitting authority give notice of each draft permit to any affected State on or before the time that the permitting authority provides this notice to the public under § 70.7(h) of this part, except to the extent § 70.7(e) (2) or (3) of this part requires the timing of the notice to be different.

(2) The permit program shall provide that the permitting authority, as part of the submittal of the proposed permit to the Administrator [or as soon as possible after the submittal for minor permit modification procedures allowed under § 70.7(e) (2) or (3) of this part], shall notify the Administrator and any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) Any EPA objection under paragraph (c)(1) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(3) Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraphs (a) or (b) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under the procedures approved to meet § 70.7(h) of this part except for minor permit modifications.

(4) If the permitting authority fails, within 90 days after the date of an objection under paragraph (c)(1) of this section, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of this Act.

(d) *Public petitions to the Administrator.* The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 70.7(g) (4) or (5) (i) and (ii) of this part except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(e) *Prohibition on default issuance.* Consistent with § 70.4(b)(3)(ix) of this part, for the purposes of Federal law and title V of the Act, no State program may provide that a part 70 permit (including a permit renewal or modification) will issue until affected States and EPA have had an opportunity to review the proposed permit as required under this section. When the program is submitted for EPA review, the State Attorney General or independent legal counsel shall certify that no applicable provision of State law requires that a part 70 permit or renewal be issued after a certain time if the permitting authority has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

§ 70.9 Fee determination and certification.

(a) *Fee Requirement.* The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

(b) *Fee schedule adequacy.* (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

(2)(i) The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount not less than $25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources.

(ii) The State may exclude from such calculation:

(A) The actual emissions of sources for which no fee is required under paragraph (b)(4) of this section;

(B) The amount of a part 70 source's actual emissions of each regulated pollutant (for presumptive fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(C) A part 70 source's actual emissions of any regulated pollutant (for presumptive fee calculation), the emissions of which are already included in the minimum fees calculation; or

(D) The insignificant quantities of actual emissions not required in a permit application pursuant to § 70.5(c).

(iii) "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

(iv) The program shall provide that the $25 per ton per year used to calculate the presumptive minimum amount to be collected by the fee schedule, as described in paragraph (b)(2)(i) of this section, shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

(A) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(B) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(3) The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.

(4) Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(5) The State shall provide a detailed accounting that its fee schedule meets the requirements of paragraph (b)(1) of this section if:

(i) The State sets a fee schedule that would result in the collection and retention of an amount less than that presumed to be adequate under paragraph (b)(2) of this section; or

(ii) The Administrator determines, based on comments rebutting the presumption in paragraph (b)(2) of this section or on his own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.

(c) *Fee demonstration.* The permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to meet the requirements of this section.

(d) *Use of Required Fee Revenue.* The Administrator will not approve a demonstration as meeting the requirements of this section, unless it contains an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are used solely to cover the costs of meeting the various functions of the permitting program.

§ 70.10 Federal oversight and sanctions.

(a) *Failure to submit an approvable program.* (1) If a State fails to submit a fully-approvable whole part 70 program, or a required revision thereto, in conformance with the provisions of § 70.4, or if an interim approval expires and the Administrator has not approved a whole part 70 program:

(i) At any time the Administrator may apply any one of the sanctions specified in section 179(b) of the Act; and

(ii) Eighteen months after the date required for submittal or the date of disapproval by the Administrator, the Administrator will apply such sanctions in the same manner and with the same conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(2) If full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission, the Administrator will promulgate, administer, and enforce a whole program or a partial program as appropriate for such State.

(b) *State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or any portion thereof, the Administrator will notify the permitting authority of the determination and the

reasons therefore. The Administrator will publish such notice in the **Federal Register.**

(2) If, 90 days after issuing the notice under paragraph (c)(1) of this section, the permitting authority fails to take significant action to assure adequate administration and enforcement of the program, the Administrator may take one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with § 70.4(e) of this part;

(ii) Apply any of the sanctions specified in section 179(b) of the Act;

(iii) Promulgate, administer, or enforce a Federal program under title V of the Act.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will apply the sanctions under section 179(b) of the Act 18 months after that notice. These sanctions will be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate, administer, and enforce, a whole or partial program 2 years after the date of such finding.

(5) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for violations of the Act or of a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a Federal program promulgated under title V of the Act.

(6) Where a whole State program consists of an aggregate of partial programs, and one or more partial programs fails to be fully approved or implemented, the Administrator may apply sanctions only in those areas for which the State failed to submit or implement an approvable program.

(c) *Criteria for withdrawal of State programs.* (1) The Administrator may, in accordance with the procedures of paragraph (c) of this section, withdraw program approval in whole or in part whenever the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include any of the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) The permitting authority fails to promulgate or enact new authorities when necessary; or

(B) The State legislature or a court strikes down or limits State authorities to administer or enforce the State program.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(B) Repeated issuance of permits that do not conform to the requirements of this part;

(C) Failure to comply with the public participation requirements of § 70.7(h) of this part;

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part; or

(E) Failure in a timely way to act on any applications for permits including renewals and revisions.

(iii) Where the State fails to enforce the part 70 program consistent with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements;

(B) Failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; or

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (c)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

§ 70.11 Requirements for enforcement authority.

All programs to be approved under this part must contain the following provisions:

(a) *Enforcement authority.* Any agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources:

(1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable requirement; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(b) *Burden of proof.* The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) *Appropriateness of penalties and fines.* A civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

[FR Doc. 92-16367 Filed 7-20-92; 12:01 pm]
BILLING CODE 6560-50-M

federal register

Tuesday
July 21, 1992

Part III

Environmental Protection Agency

40 CFR Parts 51, 52, and 60

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; and Standards for Performance for New Stationary Sources; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[FRL 4137-7]

RIN 2060-AD62

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA today adopts a broad NSR exclusion for utility pollution control projects, adhering to its policy that new source regulations already generally exclude coverage of pollution control projects undertaken at electric utility units. Similarly, EPA is today adopting an "actual to future actual" methodology for determining whether all other nonroutine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to NSR under either prevention of significant deterioration (PSD) or nonattainment provisions.

In addition, EPA is also modifying its regulations implementing the modification provisions of the title I new source performance standards (NSPS) program to provide that a utility may use for its pre-change baseline the highest hourly emissions rate achievable at any time during the 5 years prior to the physical or operational change. In addition, EPA is modifying its regulations to reflect changes made by Congress in the 1990 Amendments to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to "very clean" units.

DATES: This rule takes effect on July 21, 1992. Under section 307(b)(1) of the CAA, petitions for judicial review must be filed on or before September 21, 1992, in the U.S. Court of Appeals for the DC Circuit.

ADDRESSES: Material relevant to this rulemaking may be found in Public Docket A-90-06. This docket is located in U.S. EPA's Central Docket Section (LE-131), Waterside Mall, M-1500, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Solomon at (919) 541-5375 or Mr. Larry Elmore at (919) 541-5433, New Source Review Section (MD-15), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline reflects the organization of today's notice:

I. Introduction.

The applicability of the new source requirements of title I of the Clean Air Act (CAA) to physical or operational changes at electric utility generating units is an issue of considerable interest at this time because of the recent passage of the 1990 CAA Amendments (1990 Amendments). Many utilities will be undertaking major pollution control projects at their units in the next few years. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review (NSR) requirements of title I. In particular, NSR provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments adopted today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements. At the same time, the applicability of existing new source regulations to modifications has been the source of two recent Federal appellate decisions, *Wisconsin Electric Power Co.* v. *Reilly*, (*WEPCO*), 893 F.2d 901 (7th Cir. 1990), and *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989). As a result, EPA is today adopting clarifying amendments to these regulations that confirmed policies regarding some of these provisions as they apply to utility projects.

The EPA today amends its regulations implementing the various title I new source requirements governing physical or operational changes at electric utility steam generating units. Specifically, these changes are being issued to clarify the coverage of the NSPS, PSD and nonattainment preconstruction review requirements of title I of the CAA to projects undertaken at electric utility steam generating units.[1]

The EPA today amends the definition of "major modification" in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement or use at existing electric utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluting fuel where the primary purpose of the switch is the reduction of air pollutants) will or will not subject the source to preconstruction review. Specifically, EPA is adopting in PSD and nonattainment areas a regulatory exclusion explicating its authority under the statutory definition of "modification" and confirming EPA's current practice that pollution control projects which "do not render the unit less environmentally beneficial" are not "physical or operational changes," and hence, are not "modifications" for the purposes of parts C and D of title I and are not "major modifications" for the purposes of EPA's regulations implementing those provisions. The EPA is today also amending its PSD and nonattainment NSR regulations (40 CFR

[1] The regulations define electric utility steam generating units as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (MW) of electrical output to any utility power distribution system for sale [see e.g., proposed 40 CFR 51.165(xx)].

parts 51 and 52) [2] as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual-to-future-actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emissions that actually result from the physical change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the 1990 Amendments which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects, and for certain "very clean" units. Finally, EPA is also amending its NSPS regulations (40 CFR part 60) to allow a utility to use as its pre-change baseline its highest hourly emissions rate achievable during the 5 years prior to the proposed physical or operational change.

Today's rule addressing pollution control projects and other non-routine physical and operational changes at electric utility units is timely for several reasons. First, the 1990 Amendments establish, in title IV, a new control scheme for addressing the acid rain problem which focuses exclusively and immediately on utility power plants. Title IV will force most electric utility steam generating units to undertake pollution control projects and provides full flexibility to achieve compliance without a bias towards or against any particular pollution control method. Second, the Agency believes its extensive experience with other non-routine physical and operational changes at such units and the unique characteristics of the electric utility industry (e.g., the general similarity of equipment within the category and the extent of publicly available information) support a revision to the NSR applicability criteria for this source category. Further, while Congress did not make significant changes in the NSR and NSPS statutory language in 1990, the conference committee provided the following guidance to EPA in its Joint Explanatory Statement:

> [T]he deletion of most provisions relating to the WEPCO decision is not intended to affect or prejudice in any way the issues or resolution of the WEPCO matter. At the same time, the conferees urge a quick resolution of the WEPCO matter by EPA as appropriate.

Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630, Rep. 101–952, 101st. Cong., 2nd Sess. (1990) pp. 344–45. In passing title IV, Congress did not suspend any requirements of title I. However title I and title IV are clearly intended to work in concert, not conflict, and today's ruling is intended to ensure that harmony.

In taking the actions announced today, EPA has relied on the written comments provided to the docket in this matter as well as testimony provided at a public hearing on the proposed rule conducted by EPA on July 14, 1991.

The public comment period, originally scheduled to close on August 19, 1991, was extended until September 18, 1991 (56 FR 40843, August 16, 1991) to receive additional comments. The comment period was later reopened on November 25, 1991 (see 56 FR 59238) for 2 weeks to receive comments on the information contained in the transcript of a congressional hearing conducted by the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce on July 22, 1991, and other related information. In response to several requests to extend the comment period, the comment period was extended for an additional 7 days, making the final deadline for comments December 17, 1991 (see 56 FR 65203).

II. Background

A. The New Source Performance Standards, Prevention of Significant Deterioration and Nonattainment Programs of Title I

Title I of the CAA has three programs specifically designed to ensure that no new air pollution—whether from new sources or from modifications to existing sources—can be emitted unless the source complies with new source requirements.

The 1970 CAA required EPA to promulgate technology-based NSPS applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare [see CAA section 111(b)(1)(A), 42 U.S.C. 7411(b)(1)(A)]. The NSPS provisions were "designed to prevent new air pollution problems" by regulating newly-constructed sources and changes occurring at existing sources that result in emissions increases (see *National Asphalt Pavement Assoc.* v. *Train*, 539 F.2d 775, 783 (D.C. Cir. 1976); see also H.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358). Congress defined the term "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted" [see CAA section 111(a)(4), 42 U.S.C. 7411(a)(4)].

In 1977, Congress adopted additional amendments to the CAA. These changes included preconstruction permitting requirements for major new and modified sources under two programs, prevention of significant deterioration (PSD) and nonattainment NSR (respectively, parts C and D of the CAA). Congress intended these programs to apply generally where industrial changes might increase pollution in an area. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979). Congress incorporated in parts C and D the same definition of the term "modification" set forth in the NSPS provisions [see CAA section 111(a)(4), 169(2)(C), and 171(4)].

The NSR program for PSD (CAA sections 160–169) applies in attainment areas, i.e., those areas which have attained the national ambient air quality standards (NAAQS). To receive a PSD permit, a prospective major new source or major modification must (among other things) show that (1) it will not cause or contribute to a violation of the available air quality "increment" (designed to prevent ambient air quality from deteriorating by more than certain specified levels), (2) it will not cause or contribute to a violation of a NAAQS, and (3) it will use the "BACT," which must be at least as stringent as any applicable NSPS or hazardous pollutant standard under section 112 of the CAA.

Part D of the 1977 Amendments applies to nonattainment areas, i.e., those areas which have not met the NAAQS under section 109. To receive a permit in such areas, major new and modified sources must (among other things) (1) obtain emissions offsets, thereby assuring that reasonable progress toward attainment of the NAAQS will occur, and (2) comply with the "lowest achievable emission rate (LAER)" (see CAA sections 171–173).[3]

[2] For the purposes of this notice, references to "new source review" (or "NSR") refer to the preconstruction review requirements of both part C (PSD) and part D (nonattainment) of the CAA, unless otherwise indicated.

[3] The 1970 CAA also included a provision applicable to construction or modification of any

Continued

B. The Two-Step Test for Modifications

The modification provisions of the NSPS and NSR programs are based on the broad NSPS definition of "modification" in section 111(a)(4) of the CAA. That section contemplates a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, the reviewing authority determines whether a physical or operational change will occur.[4] If so, the reviewing authority proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based provisions of NSPS and the air quality-based provisions of NSR.

Briefly, the NSPS program examines maximum hourly emission rates, expressed in kilograms per hour.[5]

Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity. On the other hand, the NSR regulations examine total emissions to the atmosphere. For applicability determination purposes, emissions increases under NSR are determined by changes in annual emissions as expressed in tons per year (tpy).[6]

C. Step One: Physical or Operational Change

The EPA has always recognized that the definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or a change in the way that pipe is utilized). However, EPA has always recognized that Congress obviously did not intend to make every activity at a source subject to new source requirements.

As a result, EPA has defined "modification" in the NSPS and NSR regulations to include common-sense exclusions from the "physical or operational change" component of the definition. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for increases in the hours of operation or in the production rate; and for certain types of fuel switches [see e.g., 40 CFR 52.21(b)(2)(iii) and 60.14(e)]. In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e) (5). As will be discussed, in recent individual applicability determinations EPA has excluded pollution control projects from NSR following a similar "environmentally beneficial" test.

D. Step Two: Emissions Increases for NSPS Applicability

The EPA's NSPS regulations define the term "modification" as any "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (see 40 CFR 60.2 and 60.14). Under current NSPS regulations, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. That is, to determine whether a change to an existing facility will increase the emissions rate, the existing NSPS regulations authorize the use of an "emissions factor analysis," or a materials balance, continuous monitoring, or manual emissions test to evaluate emissions before and after the change [see 40 CFR 60.14(b)(2)].

Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the unit to NSPS [see 40 CFR 60.14 (a) and (b)]. In addition, under the "reconstruction rules," physical or operational changes which would cost 50 percent or more of the total cost of a comparable new facility may be classified as reconstructions (see 40 CFR 60.15) and are subject to NSPS as a new source, even if there is no emissions increase.

E. Step Two: Emissions Increases Under NSR Requirements

1. Existing Regulations

The EPA's regulations implementing the PSD and nonattainment programs require preconstruction review for sources undertaking a "major modification," *i.e.*, a physical change or change in the method of operations "that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA" [see 40 CFR 52.21(b)(2)(i), 52.24(f)(5)].[7] A "net emissions increase" is defined as the increase in "actual emissions" from the particular physical or operational change together with any other "contemporaneous" increases or decreases in actual emissions [see 40 CFR 52.21(b)(3)(i)].[8]

Applicability of the CAA's NSR provisions must be determined in advance of construction and is pollutant specific. In cases involving existing sources, this requires a pollutant-by-pollutant projection of the emissions increases, if any, that will result from the physical or operational change. Specifically, to determine whether a proposed physical or operational change will result in an emissions increase, the source must first determine a baseline level of actual emissions. The regulations define actual emissions on a particular date as "the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and

---

stationary source. This provision is presently set forth in section 110(a)(2)(C). Today's notice does not propose to change the scope of the regulations implementing this provision (see 40 CFR 51.160–164).

[4] This is further described in section III.H below.

[5] An hourly emissions rate may be determined by a stack test or calculated from the product of the instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour) (see 40 CFR 60.14).

[6] Annual emissions may be calculated as the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year, or as the product of an emissions factor (*e.g.*, from *Compilation of Air Pollutant Emission Factors*, AP-42, 4th Ed. and subsequent supplements) in units of mass emitted per unit of process throughput times the annual throughput [see 40 CFR 52.21(b)(21)].

[7] The current PSD program is set forth in two sets of regulations. One of the regulations cited (40 CFR 52.21) is part of the Federal PSD permit program which applies as part of a Federal implementation plan for States that have not submitted a PSD program meeting the regulatory requirements of 40 CFR 51.166 [standards for PSD provisions in State implementation plans (SIP)]. In most States where the Federal requirements apply, EPA has delegated the authority to implement the PSD program back to the State. Roughly two-thirds of the States are implementing their own PSD program pursuant to an EPA-approved SIP. Sections 52.21 and 51.166 have identical modification provisions.

The EPA's regulations for nonattainment areas are set forth at 40 CFR § 51.165, 52.24 and in part 51, Appendix S. These sections contain applicability provisions regarding modification that are largely identical to those in the PSD provisions.

[8] Roughly speaking, "contemporaneous" emissions increases or decreases are those which have occurred between the date 5 years preceding the proposed physical or operational change and the date that the increase from the change occurs [see 40 CFR 52.21(b)(3)(ii)]. Once a modification is determined to be major, the PSD requirements apply only to those specific pollutants for which there would be a significant net emissions increase [see e.g., 40 CFR 52.21(j)(3) (best available control technology); 40 CFR 52.21(m)(1)(b) (air quality analysis)].

which is representative of normal source operation" [see 40 CFR 52.21(b)(21)(ii)]. The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* The EPA has typically used the 2 years immediately preceding the physical or operational change to establish the baseline [see 45 FR 52676, 52705, 52718 (1980)]. However, it can allow the use of an earlier 2-year period that is more representative of normal source operations. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations.

Because the applicability determination must be made in advance of construction, EPA's NSR regulations provide that when an emissions unit "has not begun normal operations," actual emissions equal the "potential-to-emit of the unit" [see 40 CFR 52.21(b)(21)(iv)]. This approach is referred to as the actual-to-potential methodology. This regulatory provision may be overcome—and NSR will not apply—if the source owner agrees, in a federally-enforceable instrument—not to increase its actual emissions above baseline level [see e.g., 40 CFR 52.21(b)(4)].

2. The WEPCO and Puerto Rican Cement Decisions

As noted above, to calculate whether a physical or operational change "increases" emissions, EPA regulations require it to find an increase in actual emissions [see 40 CFR 52.21(b)(3)(i)(a)]. Where the emissions unit has not "begun normal operations," EPA regulations recognize that future actual emissions are difficult to predict and employ future "potential" emissions as a proxy [see 40 CFR 52.21(b)(21)(iv)]. The linchpin under the current regulations for predicting future emissions after a modification is thus whether the unit has "begun normal operations."

Two recent Federal appellate court decisions have addressed EPA's interpretation of the phrase "begun normal operations." These decisions, *Puerto Rican Cement Co., Inc.* v. *US EPA*, 889 F.2d 292 (1st Cir. 1989) and *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) ("*WEPCO*"), occasion a reexamination of EPA's interpretation of the phrase, and of the usefulness of the regulatory language itself. The meaning of the phrase is highly fact-dependent, and these decisions have created uncertainty regarding its application; thus, as described later in this notice, EPA today changes its regulations for electric utility steam generating units to employ a more useful criterion.

Both cases involved physical changes to existing emissions units, but changes of differing extent, nature and result. In *Puerto Rican Cement*, the owner of a cement plant [9] with several kilns sought to convert one "wet" kiln into a "dry" kiln, and to combine that kiln with another kiln (see 889 F.2d at 293). The court observed that the total production capacity of the renovated single kiln would exceed the combined production capacity of the previous two separate kilns by "about 35%." *Id.* It noted that the renovated single kiln would employ a different "cement-making process" than the original kiln from which it was "converted," *id.* And it said that the new kiln would be "more efficient [and] may lead the firm to decide to *increase the level of production*," *id.* at 297 (emphasis in original). In reviewing EPA's interpretation of "begun normal operations," the court applied a highly deferential standard of review, since an agency's interpretation of its own regulatory language is typically given " 'controlling weight unless it is plainly erroneous or inconsistent with the regulation' " [see 889 F.2d at 297, quoting *Udall* v. *Tallman*, 380 U.S. 1, 16–17 (1965) (citation omitted)]. The court concluded that on the facts of the case, EPA's interpretation that "normal operations" had not begun was not "arbitrary or irrational," *id.* at 298, and hence EPA's application of the actual-to-potential test to predict future emissions was permissible.

In *WEPCO*, 893 F.2d 901, the Seventh Circuit was faced with a different kind of modification. There renovations were proposed for several older (35 to 50 year old) coal-fired electric utility boilers. The physical changes involved repair and replacement of turbine-generators, steam drums and other major components. The EPA contended, as it had in *Puerto Rican Cement*, that these changes went beyond "normal operations" and thus warranted use of future potential emissions as the test for an emissions increase over past actual emissions. Here the court disagreed with EPA's interpretation that "normal operations" had not begun. The court coined the phrase "like-kind replacement" to describe the type of renovation occurring at the WEPCO plant. *Id.* at 917. The court described a "like-kind replacement" as one that "does not 'change or alter' the design or nature of the facility. Rather, it merely allows the facility to operate again as it had before the specific equipment deteriorated." *Id.* at 908. In determining whether such a "like-kind replacement" had "begun normal operations," *Id.* at 917, the court considered whether a "realistic assessment of [the] impact [of the change] on ambient air quality levels is possible.' " *Id.* at 917 [quoting *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 379 (D.C. Cir. 1979)]. The court said that where the renovations were "like-kind replacements," EPA could not reasonably interpret its regulations to say that such a unit was so different that it has not "begun normal operations." Thus, it concluded that the "actual-to-potential" test could not be applied, under EPA's regulations, to units simply undergoing "like-kind replacements." [10]

Neither of these decisions specified the threshold for when a unit has "begun normal operations." Based on these decisions, under its current regulations, EPA must consider the facts of each case and apply the actual-to-potential test only where the change is sufficiently significant to support a finding that "normal operations" have not "begun." At least for changes that are "like kind replacements," "normal operations" have begun, and the actual-to-potential test is impermissible.

Because the "begun normal operations" criterion is highly fact-dependent and its application is inherently case-by-case, it may be an uncertain indicator of what emissions test will be applied in a given instance. However, EPA's extensive experience with electric utilities, and the generally similar nature of operations within this source category, provide EPA an adequate basis on which to predict future actual emissions from such units in most cases. Consequently, as explained below, EPA is today revising its regulations to apply the actual-to-actual test on all physical or operational changes at electric utility steam generating units save those that are an addition of a new unit or constitute a replacement of an existing unit.

F. The Clean Air Act Amendments of 1990

1. New Source Review and the Acid Rain Provisions

The 1990 Amendments, Pub L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), made numerous changes in the nonattainment provisions of the CAA

[9] *Puerto Rican Cement* involved a cement plant, not an electric utility, but the court's legal analysis of the phrase "begun normal operations" in the current regulations is relevant to all facilities.

[10] On remand, EPA employed an actual-to-future actual test, comparing WEPCO's representative actual emissions for the baseline period to estimated future actual emissions based on ala the available facts in the record.

and added a new title to address the problem of acid rain. The amendments attack nonattainment problems with a broad array of new requirements all designed to bring all areas of the country into attainment with the national ambient air quality standards for all pollutants. These requirements include traffic reduction strategies, use of alternative clean fuels, increased offset requirements for stationary sources, and changes in the threshold size of stationary sources subject to NSR. A principal theme of the legislation is the establishment of categories of nonattainment areas based on the severity of the pollution problem. The more severe the area, the more controls Congress required be imposed.

The Amendments also establish, in title IV, a new control scheme for addressing the acid rain problem. The exclusive focus of this program is on utility power plant emissions of sulfur dioxide and nitrogen oxides. The 1990 Amendments require sulfur dioxide emissions from utilities to be reduced by approximately 10 million tons annually in two phases—the first to take effect in 1995, the second in 2000. A total of 111 specific plants are targeted in Phase I, and will be required to reduce their SO_2 emissions to specified emissions limits. In Phase II, these plants, and almost all others, are subject to even lower SO_2 emissions limits. This reduction program is to be implemented through a new market-based system under which emissions allowances reflecting the required reduction in current emissions are allocated to existing utility plants. Plant owners, who are required to hold allowances equal to their actual emissions, are then free to trade these allowances. Thus, the emissions of individual units may vary from the initial allocation of allowances, but aggregate emissions are always held to the program's overall target level. This program will provide powerful incentives to sources to undertake pollution control projects.

Because of these requirements, many of the plants subject to Phase I controls must make compliance decisions within the next year in order to assure that the complicated control equipment that may be necessary to meet Phase I standards is in place by the 1995 deadline. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the NSR requirements of title I. In particular, NSR provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments promulgated today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements.

2. Repowering and Clean Coal Technology Projects

In title IV of the 1990 Amendments, which creates the acid rain program, Congress made changes in the applicability of new source requirements to changes involving repowering and Clean Coal Technology (CCT) projects.

Section 409 grants an extension of the acid rain controls deadline to sources that seek to comply with the acid rain reductions by repowering a unit with qualifying clean coal technology. Section 402(12) defines repowering as:

> [The] replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term 'repowering' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

[See CAA sections 402(12) and 409(a)].

Congress provided that repowering projects that qualify for a Phase II compliance extension would also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act" [see CAA section 409(d)]. An operator can qualify for the 3-year extension of the Phase II emissions limitation by demonstrating (by December 31, 1997) to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to meet the title IV restrictions. The operator must provide, no later than January 1, 2000, additional documentation of the repowering project including a preliminary design and engineering effort for the project and a binding contract for the majority of the equipment needed, as well as any additional information the reviewing authority requires.

Today's amendments also implement an exemption from new source requirements for CCT demonstration projects created by Congress in section 415 of title IV of the 1990 Amendments. In these provisions, CCT is defined as any technology not in widespread use on the date of enactment that achieves significant reductions in SO_2 or nitrogen oxides (NO_x) emissions associated with burning coal in the generation of electricity, process steam, or industrial products [see CAA section 415(a)]. A CCT "demonstration project" is a project funded under DOE's CCT program or a similar project funded by EPA.[11]

Repowering projects that are awarded funding from the Department of Energy (DOE) as permanent CCT demonstration projects (or similar projects funded by EPA) are exempt from NSPS and PSD requirements so long as *potential* emissions (see 40 CFR 52.21(b)(4)) from the unit do not increase as a result of the project [see CAA section 415(b)(3)]. These funded projects may still be required to comply with the nonattainment NSR provisions of title I of the CAA, unless they are eluded as pollution control projects.

The installation, operation, cessation, or removal of a temporary CCT demonstration project that is operated for 5 years or less is exempt from NSPS and both PSD and nonattainment new source requirements [see CAA 415(b)(2)]. However, the facility still must comply with the applicable SIP and other requirements necessary to attain and maintain the NAAQS.

Finally, in section 415(c), Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the CAA that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-NO_x burners.

---

[11] Section 415(b)(1) defines a CCT project as a project "using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency."

III. Discussion of Final Action on Proposal

A. Pollution Control Projects

1. Regulatory Changes for Pollution Control Projects

a. *Background.* The EPA proposed to amend its PSD and nonattainment regulations as they pertain to utility pollution control projects by exercising its authority under the statutory definition of "modification" and confirming the Agency's current policy that such projects are not subject to NSR unless they render the unit less environmentally beneficial. Generally, pollution control projects at existing stationary sources are not major modifications subject to NSR requirements for the simple reason that they do not result in an increase in actual emissions. In addition, EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational change for purposes of the NSR.[12]

The EPA proposed to adopt revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under the proposal, a utility pollution control project would not be treated as a physical or operational change unless the project renders the unit less environmentally beneficial.

The key to this addition to the list of exclusions from the term physical or operational change is EPA's judgment that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR. The EPA proposed regulatory language to explicate and formalize its statutory authority to exclude pollution control projects under the NSR provisions. In 1977, when Congress enacted the NSR provisions of the CAA, it provided that the term "modification" in NSR shall have the same meaning as the term "modification" under NSPS [see section 169(2)(c), 171(4)]. At the time, regulations promulgated under the NSPS provisions defining "modification," provided that the term "modification" does not include:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

[See 40 CFR 60.14(e)(5)].

In 1978, EPA noted that "in adding section 169(2)(c) to the CAA, Congress indicated that it intended to conform the meaning of 'modification' to 'usage in other parts of the Act' [see 123 Congr. Rec. H11955, 11957 (Nov. 1, 1977)" also see 43 FR 26396 (June 19, 1978)]. Thus, just as EPA had the statutory authority to exclude pollution control projects by regulation from NSPS, the statutory authority exists for EPA to explicate by regulation an exclusion for pollution control projects from parts C and D of title I.

This exclusion under NSR reflects the existing regulatory exclusion for pollution control activities under NSPS regulations, and several recent case-specific nonapplicability determinations under the NSR programs. The NSPS regulatory exclusion contains the proviso that the replacement of a pollution control system or device cannot be less "environmentally beneficial" to qualify for the exclusion [see 40 CFR 60.15(e)(5)]. With respect to NSR, the proposal adopted a similar regulatory exclusion for pollution control projects in the PSD and nonattainment context. The major difference in the proposed NSR exclusion is that it would apply the "not less environmentally-beneficial" test to the addition and use, as well as the replacement, of a pollution control system or device. This change reflects the distinct air quality component of the PSD and nonattainment programs. By focusing on whether a pollution control project is a physical or operational change within the meaning of the NSR regulations, the proposal avoids the need to undertake a quantitative emissions increase calculation in every case, as would be necessary if such projects were deemed to be physical or operational changes. The EPA expects that most, if not all, pollution control projects will reduce net actual emissions. Nevertheless, the Administrator's authority to consider individual pollution control projects provides an adequate opportunity to determine that a pollution control project would somehow result in an adverse environmental impact and thus conclude that the project renders the unit less environmentally beneficial, and is therefore a physical or operational change that may be subject to NSR.

As proposed, a pollution control project refers to a project undertaken at a utility unit for purposes of reducing emissions from such unit. These changes are limited to the installation of conventional or innovative emissions control equipment, including, but not limited to, installation of conventional and advanced flue gas desulfurization, sorbent injection for sulfur dioxide (SO_2) and NO_x controls, electrostatic precipitators, and projects undertaken to accommodate switching to a less polluting fuel, including natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling SO_2 and NO_x emissions.

Likewise, any activity that is necessary to accommodate switching to a less polluting fuel is considered to be part of the pollution control project. In some instances, this may involve changes to the pollution generating equipment (e.g., boiler), but only if the changes are necessary to maintain the normal operating capability of the unit at the time of the project, where the capability would otherwise be impaired as a result of the fuel switch. For example, an electric utility steam generating unit that switches from a higher sulfur bituminous coal to a low-sulfur subbituminous coal may need to make certain changes to the boiler in order to avoid derating the unit.

Changes that are intended primarily to restore original capacity or to improve the operational efficiency of the facility are not considered to be part of a pollution control project for purposes of today's rule. Also, the source still must comply with all applicable SIP limits and requirements, permit conditions and applicable NAAQS or PSD increment limits.

As proposed, this pollution control project exclusion did not extend to source categories other than electric utility steam generating units. The EPA so limited this provision because, in contrast with a general lack of experience with other industries, EPA has extensive experience in addressing new source applicability issues regarding pollution control projects in the utility industry. That experience led EPA to conclude that pollution control projects in the utility industry are generally environmentally beneficial.

As noted above, generally pollution control projects at existing stationary sources are not major modifications subject to NSR because they do not usually result in an increase in actual emissions, and EPA believes that, in general, pollution control projects were

[12] For instance, EPA has specifically recognized that routine maintenance, repair and replacement, and changes in hours of operation or in the production rate are not considered a physical change or change in the method of operation [see 40 CFR 52.21(b)(2)(iii), 52.24(f)(5)(iii), 51.165(a)(1)(v)(C)(1), 51.166(b)(2)(iii), and 60.14(e)(1)].

not intended by Congress to be considered physical or operational changes for purposes of NSR.

The EPA applies its PSD regulations in harmony with its NSPS regulations, which exclude most pollution control projects [see 40 CFR 60.14(e)(5)]. In 1977, Congress incorporated the NSPS definition of modification into the PSD and nonattainment statutes [see CAA sections 111(a)(4), 169(a)(c), 171(4)]. In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to the usage under the NSPS program [see 123 Cong. Rec. H11957 (November 1, 1977)]. The EPA reiterated this view in 1978 (see 43 FR 26396, June 19, 1978). Subsequently, EPA interpreted its NSR regulations to incorporate the NSPS pollution control project exclusion.[13] The EPA later voiced concern about incorporating the precise NSPS pollution control language in the NSR context absent explication through notice-and-comment rulemaking largely because of the ambient air quality component of NSR that is absent from the NSPS program.[14] In recent years however, EPA has consistently excluded pollution control projects from NSR provided that the proposed project would be environmentally beneficial, taking into account ambient air quality.[15] In light of the title IV requirements and other provisions of the 1990 Amendments, EPA confirms that it will continue to consider the overall environmental consequences of pollution control projects for NSR applicability. By its nature, a determination of whether or not a project renders a unit less environmentally beneficial involves case-by-case assessment of its net emissions and overall impact on the environment. In making such assessments, EPA must consider the overall emissions before and after the project, as well as any other relevant environmental factors. As a result, no single factor can be identified in advance for purposes of making this determination.

b. *Comments Generally Favoring the EPA Proposal.* In general, comments from industry supported the proposal to exclude pollution control projects. Commenters supporting the provision noted that the exclusion is consistent with the CAA and EPA's earlier determinations regarding such projects. Indeed, several commenters expressed the view that no change in EPA's rules was necessary. One commenter noted that Congress indicated its intent not to apply NSPS or NSR requirements to pollution control projects by adopting the NSR definition of "modification."

Another commenter pointed out that because of the number of projects that will shortly be spawned by the acid rain provisions of the CAA, if permitting were required for every utility operator that plans a fuel switch or the installation of pollution control equipment, EPA would be overwhelmed with applications. This could affect the reliability of the electric utility industry and delay compliance with title IV. One commenter noted that a utility should not be prevented from qualifying for the pollution control exclusion if that utility takes steps to restore diminished capacity of a power plant at the same time that the utility undertakes a pollution control project such as repowering.

Several commenters supported flexibility for utilities on strategies for SO_2 control. Two commenters noted that if the national SO_2 emissions cap is maintained, plant modifications that may increase SO_2 emissions at one unit should not trigger NSR or NSPS requirements. Another commenter suggested that in light of the SO_2 emissions caps, utilities should be permitted to undertake pollution control projects or make nonroutine changes, even though such changes increase SO_2 emissions, without being forced to install technology (such as scrubbers) to control SO_2.

c. *Comments Generally Opposing the EPA Proposal.* Commenters opposed to the exclusion of pollution control projects from NSR provisions disputed EPA's authority to create such "exemptions" and disagreed that Congress intended to exclude pollution control projects from NSR. One commenter stated that the pollution control project exclusion is illegal and conflicts with section 182(e)(2) of the CAA, noting that while section 182(e)(2) provides limited NSR relief for some pollution control projects, it is not a blanket "exemption" from NSR, because the requirement to achieve the lowest achievable emission rate (LAER) remains effective, which demonstrates congressional intent to prevent EPA from granting broader exclusions.

Opponents to the exclusion for pollution control projects also pointed out that efforts by utilities to reduce one pollutant can often increase emissions of another. Such efforts, as well as projects that reduce pollution in one area but increase it in another, should not be "exempted" from NSR or PSD provisions. Several commenters provided examples of how installation of pollution control equipment or fuel switching aimed at reduction of SO_2 also had the effect of increasing emissions of NO_x and particulate matter, and how installation of low-NO_x burners increased VOC emissions.

Some opponents to the exclusion for pollution control projects said that the definition of pollution control project is overly broad, and that EPA lacks authority to apply such a broad definition.

d. *Comments Suggesting Revisions to the Proposal.* Several commenters, both for and against the exclusion, suggested specific regulatory changes to the pollution control exclusion. For instance, numerous commenters requested a clarification of the environmentally beneficial test. In addition, the following suggestions were made with regard to the definition of "pollution control project":

(1) Include any upgrade of the pollution control efficiencies of existing devices;

(2) Include "pollution prevention" changes such as leak detection and repair programs and the attendant site changes;

(3) Clarify that the pollution control project need not be a permanent change;

(4) Include boiler alterations involving natural gas cofiring, reburn, or reburn with sorbent injection even though there are benefits other than pollution control; and

(5) Include impacts on other Class I area air quality related values as well as visibility in determining whether a project that would increase emissions is nevertheless environmentally beneficial.

e. *The EPA Analysis.* Based on a review of the comments, EPA has determined to adopt a formal pollution control project exclusion for electric utility steam generating units. Thus EPA is today adopting revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a

[13] Memorandum from Edward Reich, Director, Stationary Source Compliance Division and William F. Pedersen, Acting Associate General Counsel, Air, Noise, and Radiation Division to Allyn M. Davis, Region IV (April 21, 1983).

[14] See Memorandum from Gerald A. Emison, Director, OAQPS, to Regional Division Directors (July 7, 1986).

[15] See Letter, William G. Rosenberg Assistant Administrator, EPA, to Andrew Aitken, Vice President, New England Power Service Co., March 26, 1991; Letter, Rosenberg to Patrick M. McCarter, Senior Vice President, Public Service Co. of Colorado, July 23, 1990; Letters, David Kee, Director, Air and Radiation Division, EPA Region V, to Timothy J. Method, Assistant Commissioner, Indiana Dept. of Environmental Management, January 30, 1990 and March 8, 1990.

less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under the regulations as adopted today, a utility undertaking a project qualifying for the pollution control project exclusion will not be subject to NSR under either PSD or nonattainment.

In the proposed rule, EPA did not provide any specific definition of the environmentally beneficial standard. Numerous commenters noted the lack of a specific standard for the environmentally beneficial test and requested that EPA provide a definition for this new term and guidance as to how it will be applied. Of course, as noted above, pollution control projects at existing stationary sources are generally not subject to NSR requirements for the simple reason that they do not usually result in an increase in actual emissions. In addition, as also noted above, EPA has determined that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR.

On the other hand, several commenters pointed out that a project that reduces one pollutant should not be allowed to increase emissions of another pollutant if that increase will cause or exacerbate a different pollution problem. More specifically, an environmental commenter suggested that EPA had endorsed at the Congressional hearing a view that increases would not be allowed in nonattainment areas absent a "compelling showing."

First, as discussed, nothing in today's action authorizes any emissions increase that would cause or contribute to a violation of the NAAQS, PSD increment or visibility limitation.[16] Second, the proposed and final rule provide an appropriate way of enabling utilities to undertake pollution control projects in an expeditious manner while protecting air quality. Although a pollution control project could theoretically cause a small collateral increase in some emissions, it will substantially reduce emissions of other pollutants. In recognition of this, the rule provides for a case-by-case assessment of the pollution control project's net emissions and overall impact on the environment. Third, as discussed in the following section, the permitting authority can require additional modeling under certain circumstances to evaluate the air quality impact of a pollution control project, thereby helping to assure protection of air quality. The EPA considers these safeguards to be adequate to address air quality concerns in both attainment and nonattainment areas.

Several commenters challenged the need for a regulatory exclusion, noting that EPA had already excluded numerous individual pollution control projects pursuant to its existing regulatory authority. However, while EPA has in fact made case-by-case determinations excluding pollution control projects from NSR, it has never provided a comprehensive statement of its policy in this regard nor formally included this exclusion in its NSR regulations governing SIP's or its own NSR regulations. Because of the enormous surge in projects that utilities can be expected to undertake in response to the acid rain provisions, EPA believes that a formal rulemaking spelling out the exact parameters of the exclusion is necessary.

At least one commenter cautioned EPA against requiring sources to submit "applications" to secure the pollution control project exclusion, lest sources face excessive paperwork burdens and lengthy delays every time they change their pollution control equipment. Under today's rule, and consistent with the other NSR applicability decisions, sources remain responsible in the first instance for determining what permitting requirements apply to their activities. Beyond issuing any construction or operating permits that may be needed, the permitting authority is not necessarily involved unless a source seeks a determination of NSR applicability on its own or a modeling analysis is required.

Several commenters requested that this exclusion be extended to nonroutine repairs that are undertaken by the utility in conjunction with the pollution control project. However, title IV's overall national SO_2 ceiling and emission trading program do not allow EPA to simply ignore the local air quality impact of SO_2 increases at individual title IV-covered facilities. The national emissions caps established by title IV are not designed to protect plant-specific considerations of local air quality, the focus of title I's NSR requirements. This argument is also refuted by the plain language of title IV which by its terms does not supersede title I [see §§ 403 (f) and (g), 413].

Several opponents of the exclusion point out that certain pollution control technologies can actually increase emissions of other pollutants and that the installation of a pollution control project may result in increased utilization of the unit, and thereby result in an increase in actual emissions. As noted above, EPA expects that pollution control projects will decrease actual emissions. Moreover, even though emissions increases are possible in some cases, EPA is not precluded from creating this exclusion. The mere fact of an emissions increase, standing alone, does not render the exclusion inconsistent with the CAA. For instance, EPA regulations have long excluded emissions increases associated with routine maintenance repairs and replacement, as well as increases in the operations of a unit in response to fluctuations in the market [see, e.g., 40 CFR 52.21(b)(2)(iii)(a), (f)]. Given the modeling safeguard and the overall benefit to the environment of pollution control projects as well as the relevant statutory provisions, EPA is confident that the regulatory clarification of this exclusion is a lawful and appropriate exercise of its powers.

It was also suggested that the pollution control project exclusion is inconsistent with § 182(e)(2) of the CAA. Section 182(e)(2) provides that in extreme ozone nonattainment areas (the Los Angeles area is the only one), any physical or operational change "which results in any increase in emissions" will be considered a modification. The source can avoid the offset requirements (but not the rest of NSR) by internally offsetting (i.e., netting) any increase in emissions at a ratio of at least 1.3 to 1. The provision also provides that the extreme area offset provisions (but again not the rest of NSR) do not apply to the installation of equipment required to comply with "the applicable implementation plan, permit, or this Act."

The EPA does not agree that this nonattainment provision, which applies to only one area, somehow precludes EPA from adopting an exclusion to its general NSR rules regarding pollution control projects. While there may be some overlap (i.e., utility compliance projects undertaken in the Los Angeles area that qualify under this rule as pollution control projects), in general the two provisions are quite different. Today's rule is limited to utilities but applies to all areas of the country, while section 182(e)(2) applies to all source

[16] The NSR regulations define a "major modification" subject to review as any physical or operational change at a major stationary source that would result in a "significant net emissions increase" in any regulated pollutant [see e.g., 51.166(a)(1)(v)(A)]. In nonattainment areas "significant," in reference to a net emissions increase, is defined as a rate of emissions that would equal or exceed a specified amount. For example, under the current regulations a rate of 40 tpy or more is "significant" for SO_2. This does not address the question of whether a significant increase in emissions will cause or contribute to a violation of the NAAQS, PSD increment or visibility limitation.

categories but only to the Los Angeles area. Section 182(e)(2) also appears to apply to a broader category of changes. There is no evidence that Congress intended this limited provision to preempt EPA from adopting a broad pollution control project exclusion. On the other hand, the CAA conferees did specifically direct EPA to find an administrative resolution of the WEPCO issues (see Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630. Rep. 101–951, 101st Cong. 2nd Sess. (1990) pp. 344–45). For these reasons, EPA does not believe that section 182(e) directly or indirectly limits EPA's authority here.

2. Additional Modeling Requirements

a. *Background.* A proposed pollution control project or physical or operational change cannot result in an emissions increase that will cause or contribute to a violation of a NAAQS, PSD increment, or visibility limitation [see CAA section 110(a)(2)(c), 165, 169A(b), 173]. The pollution control projects exclusion does not authorize any significant net increase in emissions that would have this proscribed impact. It is possible that a pollution control project, while not causing any increase in maximum hourly emissions, will cause a significant net increase in actual emissions, which in turn could cause or contribute to the violation of a NAAQS, increment or visibility limitation. For this reason, as proposed, the reviewing authority may require a source to perform an air quality impact analysis (modeling) whenever (1) it has reason to believe that a proposed change will result in a significant net increase in actual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis and (2) it has reason to believe that such an increase would cause or contribute to a violation of a NAAQS, increment or visibility limitation. If this modeling indicates that this increase in emissions will cause or contribute to a violation of any ambient standard, PSD increment or visibility limitation, the pollution control exclusion does not apply.

b. *Comments on the EPA Proposal.* Many commenters viewed the modeling requirement as ensuring that the pollution control project exclusion will not have an adverse impact on local air quality because sources must still comply with all applicable emission limits necessary to protect NAAQS, PSD increments, and visibility.

However, several commenters expressed concern over the adequacy of EPA's air quality impact analysis requirement as a safeguard due to the methodology proposed to calculate actual emissions. Specifically, an environmental group pointed out that using increases in "representative actual annual emissions" as the test for determining whether a pollution control project results in unacceptable impacts on air quality can exclude real emissions increases (e.g., due to demand growth), and thus fails to account for the full impact of the project. This commenter asserted that increases in "actual emissions" should be the key to use of the pollution control project exclusion.

Some commenters also objected due to the fact that the proposal relies on State and local agencies to be aware of the project and request the analysis. One commenter added that it is unclear how a violation of the NAAQS can be avoided before the fact and how the permitting agency could require an air quality analysis if the pollution control project is not subject to NSR.

Finally, a government agency questioned why the safeguard provision protected "visibility limitations" when the PSD program is designed to protect all "air quality related values" in Class I areas. An environmental group commented that the proposed rule does not provide for notification to Federal Land Managers so that they can fulfill their responsibilities to protect Class I areas.

c. *The EPA Analysis.* After careful review of the proposal and the comments, EPA has determined to promulgate the modeling provision as proposed. The EPA does not believe the objections to this provision to be well-founded. Although the proposal does not explicitly require sources to inform the permitting authority of pollution control projects, EPA anticipates that in most, if not all, circumstances involving pollution control projects, permitting authorities will be aware of the source's intentions. For instance, State permitting requirements may require the source to bring the project to the permitting authority or the source may wish to do so to secure emission reduction credits for pollutants that will be decreased. In addition, most projects at utilities are typically subject to public scrutiny in a variety of forums as a result of filings made with Public Utility Commissions and other local, State or Federal agencies. Consequently, it is unlikely that a utility could proceed with a pollution control project without some type of review regarding CAA or other requirements. This will be especially true of pollution control projects undertaken for the purpose of compliance with title IV.

The EPA disagrees with the environmental group comment that it is inappropriate to hinge use of the pollution control project exclusion on increases in "representative actual annual emissions" rather than increases in "actual emissions." Nothing in today's rules would authorize pollution control projects that result in a violation of a NAAQS, PSD increment or visibility limitation. The commenter is correct that the rule as proposed would in certain circumstances not subject to review significant increases in actual emissions from a source that follow completion of the pollution control project. However, the rule is clear that this could occur only where the increase in question in fact does not result from the pollution control project, but rather from an independent factor such as demand growth. As discussed above, it is not the purpose of the NSR program to subject all emissions increases to permitting requirements, only increases that result from a nonroutine change at an existing plant. The State may always revise its SIP to correct NAAQS violations that it concludes are caused by increased utilization but do not result from a pollution control project at that plant.

The government agency commenter is correct that PSD permitting requirements are intended to prevent a major new source or major modification from causing an adverse impact on air quality related values in Class I areas. However, the agency ignores the fact that, in general, existing facilities that have not been modified are not subject to ambient requirements related to air quality related values. The EPA believes that today's rule will allow reviewing authorities sufficient flexibility to protect, to the extent required under existing law, Class I areas from possible adverse impacts from pollution control projects. Moreover, as noted above, pollution control projects *reduce* emissions of targeted pollutants. While emissions of other pollutants could in theory increase in a few cases, EPA does not expect this to result in significant impacts on Class I areas. Where prospective projects may be cause for concern, permitting agencies have the authority to require modeling to prevent increment or visibility violations, and likewise may solicit the views of others in taking any other appropriate remedial steps deemed necessary to protect Class I areas. In deciding to adopt the rule as proposed, EPA emphasizes that all environmental impacts, including those on Class I areas, can be considered in evaluating

whether a utility unit is "less environmentally beneficial" after controls than it was before controls. Accordingly, the final rule allows consideration of all environmental impacts—beneficial and adverse—in making a determination.

B. Representative Actual Annual Emissions

1. Background

The EPA proposed to clarify its methodology for calculating emissions increases at electric utility steam generating sources that had begun normal operations. The EPA proposed to compare actual emissions before and after changes for all physical or operational changes at an existing electric utility steam generating unit other than the addition of a new unit or the replacement of an existing unit. The EPA proposed to consider a unit to be replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15. Since there is no relevant operating history for wholly new units and replaced units, it is not possible to reasonably project post-change utilization for these units, and hence, their future level of "representative annual actual emissions." For other changes, past operating history, and other relevant information, provides a basis for reasonable projections.

As proposed, the "representative actual annual emissions" methodology requires the utility to compare its baseline emissions with its future actual emissions to determine if the proposed change will increase actual emissions. The EPA's existing regulations define baseline emissions as "the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation" (see, e.g., 40 CFR 52.21). The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* Although not required by the regulations, EPA has historically used the 2 years immediately preceding the proposed change to establish the baseline [see 45 FR 52676, 52705, 52718 (1980)]. However, in some cases it has allowed the use of earlier periods. For example, in *WEPCO,* EPA found the fourth and fifth years prior to the modification more representative of WEPC0's normal operations since the source's capacity was reduced due to physical problems. The EPA proposed to retain this regulatory language, but to adopt a new presumption regarding its implementation.

Under the proposed action, the Administrator would presume that any 2 consecutive years within the 5 years prior to the proposed change is representative of normal source operations for a utility. This presumption is consistent with the 5-year period for "contemporaneous" emissions increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[17] Source owners or operators desiring to use other than a 2-year period or a baseline period prior to the last 5 years may seek the Administrator's specific determination that such period is more representative of normal operations.[18]

The future actual projection is the product of: (1) The hourly emissions rate, which is based on the unit's physical and operational capabilities following the change and federally-enforceable operational restrictions that would affect the hourly emissions rate following this change; and (2) projected capacity utilization, which is based on (a) the unit's historical annual utilization, and (b) all available information regarding the unit's likely post-change capacity utilization.[19] The projection of post-change capacity utilization for applicability purposes should be based on a projection of utilization for a period after the physical or operational change. Specifically, EPA proposed to allow sources to base the projection of utilization on the 2 years after the change, or a different consecutive 2-year period within the 10 years after the change, where the Administrator determines that such period is more representative of normal source operations.

2. Comments Generally Favoring the EPA Proposal

a. Several commenters favored the expansion of the time period for establishing the pre-change emissions baseline. Suggestions included:

(1) Allow the use of any 2 consecutive years within the last 5 years of operation to allow for a more representative baseline for units that have been shut down;

(2) Allow utilities to request to use periods of representative high utilization outside the 5 year time period;

(3) Add the "any 2 out of the prior 5 year baseline period" discussed in the preamble to 40 CFR parts 51, 52, and 60;

(4) Allow utilities to use the maximum utilization in any 1 year within at least the last 10 years, since 10 years is a more relevant capacity investment planning horizon than 5 years;

(5) Clarify that the source will be able to select the relevant 2-year period with approval of the reviewing authority required only when the pre-change baseline is outside of the 5-year period proceeding the change;

(6) Expand the baseline calculation period from 5 years to 10 years to be consistent with the after-change calculation period and to address a more representative time period;

(7) Allow the use of any 2 years (rather than consecutive years) due to long reserve shutdowns and because maintenance planning requires that utility boilers be operated in "abnormal" conditions for long durations; and

(8) Require sources to back up the choice of which 2 years to use with a short-term standard using an hourly rate, use the same 2-year period for determining the short-term and annual rates, and codify the 2 years used for the limit.

Several comments that recommended expanding the proposal to include industrial sources in the NSR exemption also noted that a "5-year window" is not satisfactory for industrial sources which do not always have representative periods of emissions immediately before a physical change. One industrial commenter suggested the use of any 2-year period be allowed.

Commenters in favor of the future actual emissions calculation method noted that it will alleviate uncertainty, for nonroutine repair, replacement, and maintenance projects while still protecting local air quality; the future-actual method reduces speculation and allows more reliance on factual data; and the actual-to-future-actual emissions comparison is more appropriate to look at the operating history and projected capacity of an existing unit to determine whether a change will increase emissions. One commenter stated that the actual-to-potential method discouraged environmentally beneficial modifications, but suggested that the

---

[17] This presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the 5 year period specified in that provision [see 40 CFR 52.21(b)(3)(1)(b)].

[18] The level of baseline emissions selected must be consistent with current assumptions regarding the source's emissions that are used under the SIP for planning or permitting purposes. Thus, the source may not select a level of baseline emissions higher than that used by the permitting authority in issuing a PSD or other construction permit to a source in the area, if such higher level would result in a NAAQS or increment violation, or violate a visibility limitation.

[19] In projecting future utilization and emissions factors, the permitting authority may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

most appropriate policy would be to adopt a potential-to-potential test.

One commenter noted that the actual-to-future-actual test would end what was felt to be the "unlawful and unfair practice" of using the NSR program to "arbitrarily reduce allowable hours of operation or rates of production for existing sources." Countering the argument that the actual-to-future-actual test could create public health problems, two commenters noted that utilities must comply with all Federal, State and local air quality restrictions regardless of the tests used. Also supporting the actual-to-future-actual test, one commenter pointed out that source owners will be motivated by incentives in the CAA, proposed regulations, and market forces to finance and engineer economic and efficient physical and operational changes at plants so as to achieve excellent environmental control. One commenter favored calculating future emissions over a representative 2-year period within a 5-year period after the change.

3. Comments Generally Opposing the EPA Proposal

One opponent of the proposed methods stated that emission increases at power plants would now be fostered since the proposal will allow utilities to choose their own definitions for when emissions have increased.

In general, opponents of the proposal regarding the pre-change baseline noted that the change is arbitrary and capricious and that there is no analysis in the docket suggesting that any 2-year period is more representative of pre-change maximum emissions. Commenters noted that under the proposal, sources could select the years in which they had the highest emissions in an attempt to minimize the appearance of an increase and escape NSR. One commenter noted that the change in baseline calculation methodology would give utilities such flexibility in refurbishing, repowering, and life extension projects as to bias competitive power markets towards the continued use of existing old units rather than the construction of new ones.

Opponents to the use of future actual emissions stated that there is no reasoned basis for an unenforceable representative actual emissions approach, and application of this test to electric utilities is not consistent with EPA's established policy toward other sources. Other comments contended that the future actual test ignores all past precedents and that, in determining whether a change triggers NSR, EPA should compare actual emissions for the current unit to potential emissions from the altered source; the future actual test does not guard against artificially low estimates made by sources to escape NSR, nor does it protect against substantial increases made immediately after the 2-year period; and the future actual emissions calculation procedure amounts to self-regulation and is easily subject to abuse.

State and local air agencies generally opposed the future actual method of calculating post-change emissions. One noted that the appropriate emission increase test should be determined on a case-by-case basis. One agency noted that the actual-to-future actual approach results in a significant relaxation of title I NSR requirements and would allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSR, hampering local air quality attainment and maintenance efforts. There were several comments that future emissions cannot be reasonably determined solely on past operating history. One State noted that direction is needed on how actual versus potential emissions are estimated.

A few commenters addressed the 2-year period after the proposed change which is the basis for calculating the future actual emissions. Opponents of the future actual concept stated that use of such a provision would result in unrealistically low future emissions projections and shield a company against efforts to enforce NSR requirements at a source that increased emissions 3 years after making physical changes.

An environmental group and several State agencies noted that the projected post-change emissions should become an enforceable permit condition in order to commit a source to limit its future emissions to a specific amount and to provide assurance that these projections are reasonable estimates of expected emissions. If a source will not accept such a permit condition, then the source should have to use potential post-change emissions.

4. Comments Suggesting Revisions to the Proposal

Three commenters suggested a more flexible test for ascertaining SO_2 increases for determining applicability of NSR and NSPS requirements, namely a measure of pollution per unit of electrical output.

a. Commenters made the following specific suggestions for changes surrounding the future actual calculation method:

(1) Develop guidelines to assist States in making like-kind determinations;

(2) Require like-kind replacements to use the representative actual annual emissions for calculation of actual emissions;

(3) Define "like-kind replacement" to include complete replacement of an existing emissions unit;

(4) Define "routine repair and replacement;"

(5) Apply the actual-to-actual test to like-kind replacement of an entire emitting unit;

(6) Allow new units or greenfield plants to rely on future actual emissions if they can reliably project future emissions; and

(7) Consider an alternative way to make the NSR accounting system consistent, such as basing it on past allowable to future allowable emissions.

(b) Other suggestions included the following:

(1) Provide guidance on routine repair and replacement and maintenance activities to include placing units on cold reserve and bringing them back on line, and

(2) Use a 2-year period other than immediately after the change only when the EPA cannot clearly demonstrate that the 2-year period immediately following the change is not representative.

5. The EPA Analysis

The EPA has decided to promulgate the proposed "representative actual annual emissions" methodology for calculating emissions changes at electric utility steam generating units where the changes do not involve the construction of a new, "greenfield" unit or the replacement of an existing one. After a thorough review of the comments, EPA concludes that the comparison of "actual emissions before" to a projection of "actual emissions after" a physical or operational change at an existing utility steam generating unit is workable and, with the added safeguard discussed below, is the most suitable method for evaluating emissions changes at such sources.

Many commenters questioned EPA's proposed presumption that sources may use, as the baseline, emissions from any 2 consecutive years within the 5 years prior to the proposed change without regard to normal source operations. As discussed in the proposal, this presumption is consistent with EPA's decision in WEPCO and the 5-year period for "contemporaneous" emissions

increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[20]

Moreover, EPA is not reading "normal source operations" out of the regulation as charged. Rather, the presumption recognizes the nature of utility operations without compromising the existing regulatory language which requires that the pre-change 2-year period used in defining baseline emissions be representative of "normal" operations. For example, as a system a utility's "normal" operations means directly responding to a demand for electricity. A cold winter or hot summer will result in high levels of "normal" operations while a relatively mild year will produce lower "normal" operations. By presumably allowing a utility to use any 2 consecutive years within the past 5, the rule better takes into consideration that electricity demand and resultant utility operations fluctuate in response to various factors such as annual variability in climatic or economic conditions that affect demand, or changes at other plants in the utility system that affect the dispatch of a particular plant. By expanding a baseline for a utility to any consecutive 2 in the last 5 years, these types of fluctuations in operations can be more realistically considered, with the result being a presumptive baseline more closely representative of normal source operation.

The EPA disagrees with comments seeking to allow the use of any 2 consecutive years within the last 5 years of a unit's "operation" rather within than the 5 years directly preceding the proposed change. A shifting of the 5-year period would be difficult to harmonize with definitions of contemporaneous contained in the regulations [see, e.g., 40 CFR 52.21(b)(3)(iii)]. This type of open-ended provision would even credit a unit which has been inoperative for 20 or 30 years or longer with a high level of emissions. The EPA notes, however, that as has always been the case under the prior regulations, any source owner or operator may request a determination that another baseline period is more representative of the unit's "normal" operations.

Several commenters opposing today's regulatory changes charged that without appropriate assurances utilities could deliberately underestimate future operations (and thus emissions) for the purpose of avoiding review or that even where a forthright estimate is made, the forecast may prove inaccurate. The EPA is concerned that without appropriate safeguards increases in future actual emissions that in fact resulted from the physical or operational change could go unnoticed and unreviewed. For this reason, EPA has added the safeguard explained below.

The EPA does not, however, agree with comments that post-change emissions estimates must always be made into permanent federally-enforceable permit conditions. To do so would permanently restrict a utility's legally allowable emission limits to its pre-change actual emissions level unless it subsequently underwent NSR, and would fail to account for the very real possibility that emissions might increase over baseline levels in the future for reasons unrelated to the physical or operational change in question. As discussed more fully in the following section, NSR applies only where the emissions increase is caused by the change. Thus the issue should be viewed more as one of tracking and monitoring post-change utilization and/or emissions levels at the unit to confirm that baseline emission levels are not exceeded as a result of the change.

To guard against the possibility that significant increases in actual emissions attributable to the change may occur under this methodology, EPA is clarifying in the final regulations that any utility which utilizes the "representative actual annual emissions" methodology to determine that it is not subject to NSR must submit for 5 years after the change sufficient records to determine if the change results in an increase in representative actual annual emissions.[21] Utilities may use continuous emissions monitoring data, operational levels, fuel usage data, source test results or any other readily available data of sufficient accuracy for the purpose of documenting a unit's post-change actual annual emissions.

Where the change does not increase the unit's emissions factor, i.e., the amount of pollution emitted by a source after control per unit of fuel combusted (such as pounds of SO_2 emitted per ton of coal burned), the utility may submit annual utilization data, rather than emissions data, as a method of tracking post-change emissions. If annual utilization data show that the unit increased utilization above baseline levels, the permitting authority should determine whether the increase resulted from the change. Where a causal link exists between the change and the increase in utilization, the permitting authority should then determine whether emissions have also increased as a result of the change.

Changes that could increase a unit's emissions factor typically involve changes to the boiler itself. (Such changes do not include activities that qualify as pollution control projects under today's rule.) Where these types of changes exist, the utility should submit annual emissions data to the permitting authority. If these data suggests that the utility has increased annual emissions over baseline levels, the permitting authority should inquire whether the increase resulted from the physical or operational change. The utility may demonstrate that any increase was caused by an independent factor, such as demand growth.

Appropriate records are to be submitted to the permitting agency on an annual basis for a period of 5 years from the date the unit begins operations (i.e., post-change operations after an initial shakedown period). A longer period, not to exceed 10 years, may be required by the permitting agency where it has determined that no period within the first 5 years following the change is representative of source operations.

Since it is expected that utilities will submit the same data normally used to report emissions or operational levels under existing Federal, State or local air pollution control agency requirements, EPA does not expect that documentation of post-change actual annual emissions will impose any additional data collection burden on the part of a utility.

The purpose of this provision is to provide a reasonable means of determining whether a significant increase in representative actual annual emissions resulting from a proposed change at an existing utility occurs within the 5 years following the change. Thus the intent is to confirm the utility's initial projections rather than annually revisiting the issue of NSR applicability. If, however, the reviewing authority determines that the source's emissions have in fact increased significantly over baseline levels as a result of the change, the source would become subject to NSR requirements at that time. The EPA has adopted this approach and the time period because it believes that, in most cases, any emissions increase resulting from a physical or operational change at a utility unit would occur within the first 5 years of normal operation of the unit

[20] As discussed, this presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the 5-year period specified in that provision [see 40 CFR 52.21(b)(3)(1)(b)].

[21] This is the only substantive change from the regulations as proposed. However, EPA has also made minor changes to the wording of some of the regulations to address problems with clarity and syntax. Since these changes are not intended to alter the meaning of the regulations, they are not individually discussed in this preamble.

after the change. Thus, EPA will presume that any increase in emissions levels more than 5 years after the change has occurred is not related to the physical or operational change.

In response to comments regarding "like-kind" replacements, EPA notes that today's regulations recognize no distinction between "like-kind" replacements and other nonroutine physical or operational changes at a utility steam generating unit. The "actual-to-future-actual" methodology promulgated today for calculating emissions changes applies to all types of changes at utility units, including the replacement of "like-kind" components at an existing unit. However, the "like-kind" replacement of a whole unit is for all practical purposes a replacement unit and, therefore, is treated as a new unit.

Although several commenters suggested that EPA should expand the representative actual emissions test to new and reconstructed units, EPA has decided not to do so. Since there is no relevant operating history for new or reconstructed units, it would not be possible to accurately project operations or emissions for these units. Consequently, the EPA has left unchanged the regulations which require that for any unit which has not begun normal operations, actual emissions are considered equal to the unit's potential-to-emit.

A few commenters requested that EPA define or provide guidance on "routine repair, replacement and maintenance" activities. The June 14 proposal did not deal with this aspect of the regulations, nor do the regulatory changes promulgated today. However, the issue has an important bearing on today's rule because a project that is determined to be routine is excluded by EPA regulations from the definition of major modification. For this reason, EPA plans to issue guidance on this subject as part of a NSR regulatory update package which EPA presently intends to propose by early summer. In the meantime, EPA is today clarifying that the determination of whether the repair or replacement of a particular item of equipment is "routine" under the NSR regulations, while made on a case-by-case basis, must be based on the evaluation of whether that type of equipment has been repaired or replaced by sources within the relevant industrial category.

C. The Causation Requirement

1. Background

The NSR regulatory provisions require that the physical or operational change "result in" an increase in actual emissions in order to consider that change to be a modification [see e.g., 40 CFR 52.21(2)(i)]. In other words, NSR will not apply unless EPA finds that there is a causal link between the proposed change and any post-change increase in emissions. The EPA proposed to amend its rules to clarify this provision in the context of modifications at electric utility steam generating units.

Under the proposed regulations, any emissions increase attributable to a physical or operational change, such as a physical or operational change that significantly alters the efficiency of the plant, (see, *Puerto Rican Cement*, 889 F.2d at 297–8), must continue to be included in the post-change emissions calculation. The proposal clarified that where increased operations are in response to independent factors, such as system-wide demand growth, which would have occurred and affected the unit's operations even in the absence of the physical or operational change, such increases do not result from the change and shall be excluded from the projection of future actual emissions. Thus, in assessing whether the proposed change will result in an increase in actual emissions, utilities need not include in their projection of post-change utilization that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, such as an increase in projected capacity utilization due to the rate of electricity demand growth for the utility system (of which that source is a member) as a whole.

Under today's rule, during a representative baseline period (see *supra*), the plant must have been able to accommodate the projected demand growth physically and legally even absent the particular change. Increased operations (and resultant increases in actual emissions) that could not physically and legally be accommodated during the representative baseline period but for the proposed physical or operational change should be considered to result from the change.

2. Comments Generally Favoring the EPA Proposal

Several utility representatives supported the proposed demand growth exclusion and the causation requirement. Many commenters requested clarification of certain points or expansion of certain provisions. One commenter noted that there should be a specific exclusion for emissions increases at a generating station resulting from generation shifts and decreased plant efficiencies caused by operation of pollution control systems. Another noted that the discussion of the criteria for recognizing "factors unrelated to the physical or operational change" should be improved upon because the proposed requirements that a facility must have been physically able to accommodate the projected growth during a "representative baseline period" could have a negative impact in utility capacity planning and investment decisions, depending upon how such a period is determined.

One commenter noted that EPA should specifically recognize an exception for units which have been inactive, because a unit should not have to include all of its emissions due to demand growth merely because it was in need of repair or maintenance while inactive. Commenters asked that EPA better define "independent factors" in the context of the demand growth exclusion. Lastly, one commenter stated that the final rule should reconcile the "demand growth exclusion" with the existing "hours of operation/rate of production" exclusion by confirming that increases attributable to system-wide demand growth are already excluded under the already-existing exclusion and, therefore the "demand growth exclusion" only applies where there is a federally-enforceable permit term limiting hours of operation or production rate.

3. Comments Generally Opposing the EPA Proposal

Opponents of the exclusion of emissions attributable to demand growth contended that there is no rational basis for ignoring such emissions. When increased capacity or utilization is the immediate goal of a project and an increase in emissions occurs, the project must be subject to NSR regardless of the underlying reasons for the increased capacity or utilization and corresponding emission increase. Contrary to the letter and purpose of the statute, the demand growth exclusion could result in major increases in actual emissions going unreviewed and unregulated, would create serious local pollution problems, and would discriminate against companies that were successful in implementing energy efficiency programs. One local agency pointed out that it is virtually impossible to determine with any degree of certainty what portion of a unit's emissions are attributable to an increase in projected capacity utilization.

In addition, commenters noted that the exclusion will have an adverse effect on local agencies' ability to control emissions and that the time of

construction of a project is the most efficient and effective time to address such emissions. One commenter stated that the exclusion for demand growth may further bias competitive power markets toward existing units, and that EPA failed to consider the impact of the causation requirement on utility operations, emissions or competition in power markets.

4. The EPA Analysis

After careful consideration of the comments received and further analysis of the issues involved, EPA has decided to promulgate the causation provision as proposed.

Commenters argued that any post-change emissions increase, regardless of its origin, should subject a source to NSR. However, these arguments ignore the relevant statutory and regulatory modification provisions. No commenters challenging the provision have suggested the statute and implementing regulations do not contain a causation provision. Rather, they argue that in the proposed rule EPA has misconstrued this requirement.

In conjunction with developing the representative actual annual emissions methodology, EPA recognized that the analysis of the causation requirement may disclose that an emissions increase that follows a nonroutine physical or operational change is merely coincidental, and in fact results from independent factors such as demand growth. It is important to emphasize, however, that this does not amount to a per se exclusion of demand growth from the emissions increase calculation. Rather, demand growth can only be excluded to the extent it—and not the physical or operational change—is the cause of the emissions increase. The EPA believes that this is a reasonable interpretation of the statutory provision in question, of EPA's own regulations, and of judicial precedents.

Consequently, where projected increased operations are in response to an independent factor, such as demand growth, which could have occurred and affected the unit's operations during the representative baseline period even in the absence of the physical or operational change, the increased operations cannot be said to result from the change and therefore may be excluded from the projection of the unit's future actual emissions. Conversely, where the increase could not have occurred during the representative baseline period but for the physical or operational change, that change will be deemed to have resulted in the increase.

The EPA did receive numerous comments regarding the difficulty of applying this new interpretation. However, EPA believes it is possible to distinguish between emissions increases that are related to a physical or operational change from those that are not. This issue is a fact-dependent determination that must be resolved on a case-by-case basis. As discussed, EPA considers emissions increases due to increased operations that could not be physically or legally accommodated during the representative baseline period but for the proposed physical or operational change, to result from the change. The preamble to the proposal also made clear that any emissions increase attributable to a physical or operational change that significantly alters the efficiency of the plant, (see *Puerto Rican Cement*, 889 F.2d at 297–8), must continue to be included in the post-change emissions calculations. However, EPA in no way intends to discourage physical or operational changes that increase efficiency or reliability or lower operating costs, or improve other operational characteristics of the unit and does so by focusing on the effect of any nonroutine changes on the operating characteristics of the unit during the representative baseline period. The EPA recognizes that improvements such as these are desirable for economic reasons and to assure a reliable supply of electricity. Thus, physical or operational changes that improve operational characteristics will be treated in the same manner as any other changes. This means that where an improvement involves a routine change, it is excluded from the NSR definition of "major modification." Alternatively, where an improvement is not routine and an emissions increase results from the improvement, that portion of the emissions increase resulting from the improvement will be considered in determining whether the proposed change subjects the unit to NSR requirements.

Several commenters requested a clarification concerning a unit's ability to accommodate demand growth in its pre-change configuration. In EPA's view, such a clarification is not warranted. As discussed above, operational levels that a unit could not have achieved during the representative baseline period but for the physical or operational change are considered to result from the change. Post-change emissions increases associated with such operational levels must, therefore, be considered to result from the change and be taken into account for NSR applicability purposes.

Numerous commenters pointed out that it may be very difficult to determine when an increase is caused by independent factors and when it is caused by the physical change. Also, an environmental commenter argued that this causation question must always be resolved in favor of including all post-change emission increases that follow a change which improves a unit's efficiency, since in its view an efficiency gain will always be the primary determinant of the utility's use of a generating unit, notwithstanding the presence of other necessary—but not of themselves sufficient—factors such as demand growth. However, as so formulated, the comment answers itself. If efficiency improvements are the predominant cause of the change in emissions and demand growth is not, the exclusion does not apply. But this is a question of fact which must be resolved on a case-by-case basis and is dependent on the individual facts and circumstances of the change at issue. EPA declines to create a presumption that every emissions increase that follows a change in efficiency is inextricably linked to the efficiency change.

In calculating demand growth, utilities may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

The EPA disagrees with comments that this provision could result in major increases in actual emissions going unreviewed with the potential to create serious local air pollution problems. First, the NSR major modification provisions do not apply to all increases in emissions, just emission increases which result from a nonroutine physical or operational change at an existing major source. Second, as has already been observed, this provision does not amount to a per se exclusion of demand growth. Finally, this new provision does not diminish the scope of the coverage of EPA's NSR regulations. Rather, it merely incorporates into the actual-to-future-actual methodology a requirement of the pre-existing statutory and regulatory scheme.

Moreover, in response to those concerns that a demand growth exclusion could lead to serious local air pollution problems, EPA notes the restrictions it placed on the overall future projection in the proposal: the level of emissions the source claims that it will operate at should be consistent with current assumptions regarding the

source's emissions that are used in the relevant SIP.

Finally the EPA does not agree with the commenter requesting that the final rule confirm that increases attributable to system-wide demand growth are already excluded under the existing exclusion for increases in hours of operation and, therefore, the "demand growth exclusion" only applies where there is a federally-enforceable permit term limiting hours of operation or production rate. The commenter's statement is not correct. Although a source may vary its hours of operation or production as part of its everyday operations, an increase in emissions attributable to an increase in hours of operation or production rate which is the result of a construction-related activity is not excluded from review (see *WEPCO*, 893 F.2d at 916 n.11; *Puerto Rican Cement*, 889 F.2d at 298).

D. Repowering

1. Background

As previously mentioned, title IV of the 1990 Amendments grants special treatment to utilities that seek to comply with the mandated acid rain reductions by repowering a unit with qualifying clean coal technology [see 1990 Amendments section 402(12), 409(a)]. Specifically, repowering projects that qualify for a Phase II compliance extension will also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act" [see section 409(d)]. The EPA interprets the requirement that the repowering not lead to an increase in "actual hourly emissions" as an expression of Congressional intent that with respect to repowering projects, EPA should use the same general approach to determining applicability as it has for other physical or operational changes, discussed above. Accordingly, EPA proposed rules provided that a repowering project which results in an increase over baseline in a unit's post-modification hourly emissions will not be eligible for this limited NSPS exemption.

The proposed NSPS exemption applied to repowering of existing units at existing sources, so long as the project qualifies for the Phase II extension and satisfies the "actual hourly emissions" increase test. Because of this provision, the reconstruction limitations specified in 40 CFR 60.15 are not applicable to qualifying repowering projects. However, no special treatment can be afforded to a new unit which is located at a different site than the existing unit it replaces [see CAA section 409(d)].

Pursuant to section 409(e), EPA will provide expedited NSR processing for repowering projects and will encourage State permitting authorities to do the same.

2. Public Comment

The EPA did not receive any comments opposing the repowering proposal while several industry and Congressional commenters supported it. The Congressional commenters requested clarification of EPA's interpretation of term "repowering." The Congressional commenters stated that the proposed definition of "repowering" can be interpreted as limiting qualifying repowering technologies to those that only involve the replacement of the boiler, disqualifying highly-promising, multi-pollutant technologies that do not involve boiler replacement.

3. The EPA Analysis

In light of the lack of negative comments, EPA is today promulgating the CCT provisions as proposed. This includes no change in the definition of "repowering." However, EPA will follow an expansive interpretation of the term repowering, which should address many of the concerns expressed by some of the commenters while remaining consistent with statutory terms and Congressional intent. The EPA notes that this interpretation is currently subject to comment as part of the rulemaking implementing the acid rain provisions of the 1990 Amendments and EPA may address this issue further in the context of that proceeding.

Section 402(12), in relevant part, defines "repowering" as follows:

> Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990 * * *[22]

[22] The last sentence in the definition of "repowering" in section 402(12) of the CAA refers to a specific CCT project in Tallahassee, Florida (Arvah B. Hopkins Station Unit 2 Circulating Fluidized-Bed Repowering Project) awarded November 30, 1990.

a. The definition thus provides for three major categories of repowering technologies:

(1) Technologies specifically listed in the statute;

(2) Derivatives of one or more of these listed technologies; and

(3) Technologies which:

(a) Are capable of controlling multiple combustion emissions simultaneously;

(b) With improved boiler or generation efficiency; and

(c) With significantly greater waste reduction than technologies in widespread commercial use as of the date of enactment of the CAA (November 15, 1990).

In accordance with the language of the statutory definition of repowering, the final rule provides that a qualifying repowering technology must involve "replacement" of an existing boiler. The language of section 402(12), though ambiguous in many significant respects, will not support an interpretation which fails to recognize that repowering requires use of an appropriate new technology instead of the existing boiler.

The EPA considered whether the reference to boiler replacement in section 402(12) could be read as referring to only the first category of technologies. However, such an approach would require reading the provision as if the recital of the three alternative technologies began immediately after the phrase "repowering means," rather than after the phrase "repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies:."

Such a reading is inconsistent with the structure of the provision, in which the colon, which is "used chiefly to direct attention to matter that follows (as a list, explanation, or quotation)" [see Webster's Ninth New Collegiate Dictionary 266 (1985)], follows rather than precedes the reference to boiler replacement. Moreover, all three categories of technologies would be properly described as "the following clean coal technologies:."

While it is true that the list following the colon, like the phrase "the following clean coal technologies:" could be read to refer exclusively to the seven named technologies (or to those technologies and their approved derivatives), such an interpretation would still fail to provide a satisfactory explanation of the grammatical structure of the provision. Either of these two readings would fail to explain how the technologies that, according to those readings do not consider boiler replacement, relate to the term "repowering." In other words, if

the concept of boiler replacement were removed from either the third category of technologies or from both the second and third categories, the provision would read, with respect to those categories:

> The term "repowering" means * * * a derivative of one or more of (the seven) technologies, and any other technology capable of (meeting the three performance criteria).

The difficulty with this reading is that "repowering," whatever the precise scope of its definition, clearly means doing something with a derivative technology or a multipollutant control technology, rather than simply those technologies themselves. Requiring boiler replacement for all three categories avoids this particular infirmity.

The EPA also considered another textual argument that could be advanced to support an interpretation of section 402(12) that boiler replacement is not required for the third category of technology, but it also is unpersuasive. It simply does not follow from the fact that the category of multipollutant control technologies alone has expressly enumerated performance criteria that those criteria are meant to be the exclusive test for qualifying technologies of these types. Because the third category of technology was intended to encompass types of technologies which were unknown on the date of enactment (and thus, unlike the prior categories, not susceptible to being enumerated in the statute) that category would necessarily have to include explicit defining criteria, whether or not the boiler replacement criterion applied to it. By the same token, the fact that the latter two categories are subject to EPA approval in consultation with DOE does not imply that this is the only criterion applicable to them. Each is subject to additional criteria (i.e., the requirement of derivation in the case of the second category, and the three performance criteria in the case of the third category).

The pivotal phrase "replacement of an existing coal-fired boiler" is undefined in the statute, and its scope is not clearly delineated by its context. Some of the seven listed technologies may not require total boiler replacement, although all require such extensive changes to the boiler that they are tantamount to boiler replacement. Under the principle of *ejusdem generis*, therefore, the Agency clearly has, at a minimum, ample discretion to treat as functional boiler replacement any changes broadly similar in scope to those involved in installing the seven named technologies. Such a definition would clearly represent the lower, not the upper, limit on the Agency's discretion to give meaning to the term "replacement". Accordingly, the statute confers on EPA the additional discretion to define boiler replacement in a functional manner that takes into account achievement of the specified performance criteria as well as the degree of changes to the boiler. By way of example, elsewhere in today's final rule the Agency considers a unit to be "replaced" if it would "constitute a reconstructed unit within the meaning of 40 CFR 60.15." In accordance with the above language EPA will use the 40 CFR 60.15 test for "reconstruction" as general guidance in determining whether each individual application under § 409 involves sufficient replacement to qualify for a repowering extension and hence, an NSPS exemption.

In short, because "Congress has not directly spoken to the precise question at issue," *Chevron, U.S.A.* v *NRDC*, 467 U.S. 837, 842–43 (1984), EPA enjoys a significant measure of discretion to determine to what extent replacement of less than 100 percent of the parts of an existing boiler could be deemed replacement for purposes of § 402(12) and this rule. For the reasons discussed above, EPA believes the proposed regulatory language regarding repowering is reasonable. That proposal is today promulgated without change.

E. Clean Coal Technology Demonstration Projects and Very Clean Units

1. Background

The EPA also proposed rules implementing the new CCT exemption created by the 1990 Amendments. In this proposal, temporary CCT demonstration projects are defined as those CCT demonstration projects lasting 5 years or less. Title IV gives these projects an exemption from NSPS, PSD and nonattainment requirements. *Id.*, section 415(b)(2). However, the facility would still be subject to any applicable SIP and must comply with any other requirements necessary to attain and maintain NAAQS. The EPA proposed to implement this provision and clarify that EPA considers the 5 year period as starting on the date of startup (as defined in 40 CFR 60.2). A temporary demonstration project may be converted to a permanent status at any time, provided it meets all the requirements that apply to a permanent CCT project criteria at the time of conversion.

Further, EPA proposed that at the end of a temporary project, the facility must be returned to pre-demonstration conditions and hourly emission rates (or lower). The return of the facility to its pre-demonstration physical and operational condition would not result in the loss of the actual emissions margin between pre-demonstration actual emissions rate and SIP-allowable emissions rates for that facility. Rather, the facility would be treated as if the temporary demonstration project had never occurred.[23]

This proposal did not extend to emissions increases that are unrelated to the conduct of temporary demonstration projects. The EPA considers emissions increases (above the pre-demonstration levels) that are attributable to physical or operational changes, other than those necessary to restore that unit to its pre-demonstration condition, to be beyond the scope of the Congressional exemption.

The EPA also proposed to implement an exemption from NSPS and PSD requirements for repowering projects which are awarded funding from the DOE as permanent CCT demonstration projects (or similar projects funded by EPA) so long as *potential* emissions [see 52.21(b)(4)] from the unit do not increase as a result of the project [see section 415(b)(3)]. However, repowering projects that qualify as pollution control projects will be treated as other pollution control projects for the purposes of the nonattainment provisions of title I of the CAA.

Finally, the proposal implemented the statutory exemptions in section 415(c). In that section, Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the CAA that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-NO_x burners. This exemption appears to have been narrowly tailored and is not expected to have widespread applicability.

[23] This would be the case even if there were small differences in the post-demonstration physical and operational conditions due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used. Thus, EPA would not seek to apply NSPS or NSR because of a post-demonstration emissions increase attributable solely to an increase in the hours of operation or production rate of the unit (subject to the NSPS limitation that the production rate increase must be accomplished without a capital expenditure).

2. Comments Generally Favoring the EPA Proposal

Some commenters specifically mentioned that CCT demonstration projects should not be subject to NSR provisions.

3. Comments Generally Opposing the EPA Proposal

Some commenters did not support the proposed blanket inclusion of all CCT projects as pollution control projects. One commenter suggested that each CCT project be reviewed on a case-by-case basis and, if the project results in higher emission levels, it should not be considered a pollution control project. Another commenter gave an example of a CCT project that converts an oil-fired unit to a higher emitting coal-fired unit, noting that this project should not be considered a pollution control project.

One commenter opposed to the pollution control project exemption questioned the very narrow exemption from NSPS and PSD for the reactivation of well-controlled, very clean units that had been shut down for at least 2 years prior to the enactment of the 1990 Amendments. If such exemptions are granted, the commenter urged EPA to include a condition that any reactivated sources perform an air quality impact assessment and demonstrate that they would not cause or contribute to a violation of NAAQS, PSD increments, or visibility standards.

4. Comments Suggesting Revisions to the Proposal

a. The following suggestions were made with regard to the definition of "pollution control project":

(1) Include all elements of CCT demonstration projects as an excluded project;

(2) Add the words "clean coal technology" in the examples of pollution control projects in 40 CFR 51.165, 51.166, 52.21, and 53.24; and

(3) Use the statutory definition of CCT demonstration project in 60.14(j)(1). The statutory definition omits the requirement that at least 20 percent of the funding for a CCT demonstration project come from the Federal government.

5. The EPA Analysis

After review of the public comments and further analysis of the subject provision, EPA has decided to promulgate the proposed rules implementing the CCT and very clean unit exemption created by the 1990 Amendments. The EPA views this action as merely incorporating into its existing regulatory framework statutory exemptions that were immediately effective upon passage of the 1990 Amendments. Please note that language inadvertently included in the proposed rules which purported to extend the exemption in section 415(c) to nonattainment areas has been deleted.

F. Calculation of NSPS Baseline

1. Background

As discussed in the proposal, "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" is a modification for NSPS applicability purposes [see 40 CFR 60.14(a)]. The NSPS regulations implementing this general definition focus on increases in hourly emissions, expressed in kilograms of pollutant discharged per hour. To determine if an increase in hourly emissions has occurred at a unit, a pre-change baseline must be established. Under current regulations, the emissions rate before and after a physical or operational change is evaluated at each unit by comparing the current hourly potential emissions at maximum operating capacity to hourly emissions at maximum capacity after the change. In this calculation, the reviewing authority disregards the unit's maximum design capacity.[24] The original design capacity of a unit, to the extent it differs from actual maximum capacity at the time that the baseline is established due to physical deterioration of the facility, is immaterial to this calculation.

The EPA proposed that, for an existing electric utility steam generating unit, the pre-change baseline for NSPS applicability purposes shall be calculated using the highest hourly emissions rate achievable at any time during the 5 years prior to the change. The proposal retained the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that the proposed revision, while modest, is still necessary to avoid the current regulation's undue emphasis on the physical condition of the affected facility immediately prior to the change. The proposal's more flexible provision enables units to establish a baseline that is representative of its physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which as noted above may bear no relationship to the facility's capacity in recent years.

Without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. For instance, if a unit has broken down and is in need of repairs, the utility's baseline will be artificially low. The proposed change would allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

2. Comments Generally Favoring the EPA Proposal

Several commenters noted that EPA's proposal will provide needed flexibility and alleviate uncertainty for nonroutine repair, replacement, and maintenance projects while still protecting local air quality. One commenter supported retention of the key concept of equating contemporaneous emissions with representative emissions.

3. Comments Generally Opposing the EPA Proposal

One commenter opposing the proposal noted that the provision for the maximum hourly emissions achievable during the last 5 years would result in a significant relaxation of NSPS requirements and would allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSPS. Sources that have been operating below their maximum achievable emission rates for the 5 years prior to the change can cause increases in actual hourly emission rates, inconsistent with the intent of the NSPS program. In addition, the change in the baseline will allow utilities such an extensive ability to make unregulated changes such as refurbishment, repowering or life-extension as to interfere with competition between existing units and new units.

4. Comments Suggesting Revisions to the Proposal

The most frequent comment on this part of the proposal was that the rule should be clarified to say that the baseline should reflect the last 5 years of operation, to address units that have not been operating. In this regard, commenters were concerned about whether the approach will ensure the establishment of past emission levels that are truly representative of normal

[24] [See 39 FR 36.948 col. 1 (proposed rule)]. In *WEPCO*, the utility contended that baseline capacity for the purpose of determining whether an increase in emission rate occurs for purposes of an NSPS modification is the original design capacity of the facility. However, the court rejected WEPCO's argument that original design capacity or past "representative" capacity, no longer achievable at the plant, had to be used for the baseline emissions rate.

source operations for utility units in cold storage for more than 5 years.

One commenter asked that the NSPS baseline [40 CFR 60.14(h)] be made consistent with the NSR pre-change baseline [40 CFR 52.21(b)(21)(ii)] by adding the phrase, "or other period deemed by the Administrator to be more representative of normal operation." One commenter remarked that if the rule cannot be changed to allow consideration of the past 5 years of operation, then EPA should select an alternative that would reflect a more representative baseline. In addition, some commenters asked for clarification that a unit may "net out" of NSPS requirements by switching to low sulfur coal.

5. The EPA Analysis

After careful consideration of the comments received and further analysis of the subject provision, EPA has decided to promulgate the proposed revised methodology for calculating the pre-change baseline for NSPS applicability purposes for an existing electric utility steam generating unit. The amended methodology will use the highest hourly emissions rate achievable at any time during the 5 years prior to the change.

The revised methodology retains the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that this decision to revise the current regulation will allow utilities flexibility regarding the scheduling of nonroutine repair, replacement, and maintenance projects. Also, the EPA believes that without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. This change will allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

The EPA did not agree with comments that the use of the maximum hourly emissions achievable during the last 5 years would result in a significant relaxation of NSPS requirements and allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSPS. The promulgated change provides a more flexible provision enabling units to establish a baseline that is representative of their physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which may bear no relationship to the facility's capacity in recent years.

The EPA did not agree with the comment that degree of flexibility granted utilities to make unregulated changes such as refurbishment, repowering or life-extension projects as a result of rule changes would interfere with competition between existing units and new units. The prior regulations allowed refurbishment, repowering or life-extension projects, provided emissions do not increase above the unit's current maximum hourly emissions rate. Both the prior and newly promulgated regulations require a unit that undergoes a refurbishment, repowering or life-extension project which increases emissions above the unit's actual current maximum hourly rate to be subject to NSPS. The promulgated regulation simply allows more flexibility in defining a unit's current capacity.

The EPA cannot agree with comments that the methodology for computing the NSPS baseline reflect the last 5 years of operation rather than the 5 years prior to the change. As discussed in conjunction the NSR baseline, the use of such a baseline would credit a unit which has been inoperable for 20 or 30 years, or longer, and in need of extensive nonroutine changes, with an emissions baseline that does not reflect current achievable levels of operations. The EPA notes, however, that the NSPS regulations have always allowed a dormant unit to demonstrate its current capacity in order to determine its emissions baseline. Thus an operable unit, or one in need of only routine maintenance or repair, which has been dormant for an extended period of time can still demonstrate its achievable capacity and associated emissions level by operating for a relatively short period of time.

A commenter requested that the NSPS baseline be revised to be consistent with the NSR pre-change baseline by adding the phrase, "or other period deemed by the Administrator to be more representative of normal operation." The EPA did not grant this request because it would change the emphasis of the NSPS program. As a technology-based program, the NSPS program examines maximum hourly emissions rates, expressed in kilograms per hour. Thus, emission increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity, regardless of how the unit has actually operated. In contrast, in light of the air quality planning component of the NSR program, the NSR regulations examine total actual annual emissions to the atmosphere. Consequently, normal operations over a period of time is considered for purposes of determining a source's impact on ambient air. For NSR applicability determination purposes emissions increases are determined by changes in actual annual emissions as expressed in tpy.

Some commenters requested clarification on "netting out" of NSPS requirements by switching to low sulfur coal. The proposed regulatory changes were specifically limited to addressing the maximum achievable emissions at a specific point in time (i.e., immediately prior to the change versus achievable over the last 5 years) and not the parameters used in quantifying maximum hourly emissions. Today's rule does not alter current NSPS regulations on this point. Under those present NSPS regulations, only physical limitations on maximum capacity are considered in determining potential emissions at powerplants. Thus, any prospective changes in fuel or raw materials accompanying the physical or operational change are not considered in determining maximum capacity.

G. Utility BACT Presumption for NO_x

1. Background

The EPA proposed to adopt a presumption that, in the case of PSD permits issued by EPA under 40 CFR 52.21, BACT for emissions of NO_x from existing coal-fired electric utility steam generating units undergoing a modification is the technology required under Section 407 of the CAA.

2. Comments Generally Favoring the EPA Proposal

Supporters of the low-NO_x burner BACT presumption pointed to strong Congressional policy judgement favoring the use of "low-NO_x burner technology." The BACT presumption should provide greater certainty and consistency to utilities, yet one supporter thought it would not limit the permitting authority's ability or obligation to consider other factors. One commenter noted that the BACT presumption establishes that low-NO_x burners constitute reasonable available control technology (RACT) as well as BACT.

3. Comments Generally Opposing the EPA Proposal

Concluding that the presumption is unwarranted, misguided, and possibly illegal, several opponents of the BACT presumption noted that it forecloses consideration of other NO_x control technologies and ignores the demonstrated track record and cost-

effectiveness of other technologies such as selective catalytic reduction (SCR) or selective noncatalytic reduction. Commenters noted that SCR technology is in use in more than 200 power plants in six nations and can achieve twice the NO_x reduction achievable by low-NO_x burners. The SCR or other technologies more effective than low-NO_x burners may be needed as retrofit requirements to attain the ozone standard.

Another comment voiced by opponents of the low-NO_x burner BACT presumption, was that it cannot be reconciled with the statutory command for case-by-case decisions. The EPA does not have the right to make such a presumption and several instances were cited where EPA has upheld the case-by-case BACT determination process. The BACT presumption fails to recognize that there are site-specific considerations that will affect the selection of BACT.

Opponents of the BACT presumption also noted that such a presumption improperly shifts the burden of technology analysis to States at a time when they are overburdened. In addition, it will have an adverse effect on the ability of State and local agencies to control emissions to the degree necessary because it limits an agency's attainment strategies. Some of the northeastern States expressed concerns that such a presumption might interfere with efforts to attain the ozone standard.

4. The EPA Analysis

Based upon a consideration of the comments received, and a reexamination of the relevant facts and statutory provisions, EPA has determined not to promulgate the presumption regarding BACT for NO_x. The EPA is concerned that this presumption would suggest preemption of the exercise of State discretion and case-by-case decisionmaking which Congress envisioned as fundamental to the BACT process.

In light of its decision not to adopt a BACT low-NO_x presumption, EPA will not respond to other objections and suggestions raised by commenters.[25]

H. Applicability Determinations

As noted in the proposal, source owners or operators in most instances are able to readily ascertain whether NSR requirements apply to them. Consequently, in administering these requirements, EPA does not require sources to obtain a formal applicability determination before proceeding with construction. In keeping with that practice, EPA will not require utilities to seek applicability determinations under either the revised regulations promulgated today or the interpretations of existing regulations contained in this preamble. Utilities in most cases can readily ascertain how this notice will affect them. The EPA anticipates, however, that questions will arise regarding certain aspects of this proposal. Because some instances involve discrete judgments, utilities may wish to obtain determinations of applicability. The EPA will provide such determinations upon request. Such requests should be submitted together with appropriate documentation to the appropriate permitting authority.

Comments regarding applicability determinations have previously been addressed in other sections of this rulemaking.

I. Limitation of the Rule to Electric Utilities

1. Background

Consistent with the proposed rule, the regulatory provisions promulgated today are limited to electric utility steam generating units. Such units are defined as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts of electrical output to any utility power distribution system for sale. In the proposal, EPA indicated that it was limiting this rulemaking to electric utility steam generating units for two reasons. First, title IV of the CAA addresses acid precipitation and focuses exclusively on utility power plants. Today's ruling ensures that the title I and title IV programs will not impose conflicting requirements for those plants. The second reason that the provisions were limited to utilities is that EPA's extensive experience with electric utilities, the general similarity of equipment within the category, and the particular extent of publicly available information, indicate that a revision to the NSR applicability criteria for this source category is warranted.

2. Public Comments

Several commenters noted that limitation of the proposal to electric utilities lacks rational justification as well as legal and technical support. Several noted that the limitation is unfair, arbitrary, and capricious. Typical of several letters, one commenter noted that EPA offered no qualitative evidence of underlying assumptions, and another noted that EPA violates the Administrative Procedures Act by limiting the proposal to electric utilities. To this commenter, the limitation discriminates against industrial sources and is not in line with the intentions of the legislation. One commenter noted that the *WEPCO* court did not base its analysis on any particular characteristics of the utility industry.

Numerous commenters countered EPA's claim and justification for the limitation that the Agency has more experience with electric utilities than other industries. Illustrating that EPA has extensive experience with other industries, commenters mentioned chemical manufacturing, cement plants, refineries, paper mills, auto assembly plants, the 65 NSPS sources, and sources covered in numerous guideline documents and RACT guidance. In addition, several noted that the lack of understanding is a poor excuse for not applying the proposal to all industries.

Commenters also noted that other industries face the same problems that utilities do when attempting to install pollution control equipment. Like electric utilities, pollution control projects in other industries are generally environmentally beneficial, but the limitation of the exclusion to electric utilities as proposed would discourage the other source categories, from installing pollution control projects.

Several commenters noted that other industries will be equally impacted by extensive regulations under titles I, III, and V, just as electric utilities will be affected by title IV. For example, pharmaceutical plants will undergo physical and operational changes to meet reasonably available control technology (RACT) and/or maximum achievable control technology, and these projects should not be subject to NSR or NSPS. They note that the burden and supportive reasons for making the proposed changes are just as great for other categories of sources as they are for electric utilities.

Some commenters pointed out that EPA presently applies the pollution control project exemption from NSPS to all industries and that existing NSR rules are not industry-specific.

3. The EPA Analysis

The EPA does not believe that this rule should be expanded at this time but will address this issue in a separate rulemaking. Specifically, EPA currently has underway a separate rulemaking which will consider the desirability of adopting for other source categories the

[25] This includes comments on the environmental impacts of the low-NO_x burner presumption, elaboration on what constitutes low-NO_x burner technology, and the merits and current use of other NO_x control technologies as BACT.

NSR pollution control project exclusion and the changes to the methodology for determining whether a source change constitutes a modification that have been adopted today for utilities. This rulemaking will also discharge EPA's obligation to propose and take final action on a potential-to-potential methodology as required by Exhibit B of the settlement agreement in *Chemical Manufacturers Association* v. *EPA* (D.C. Cir., No. 79–1112). The EPA presently intends to propose these NSR revisions by early summer.

Prior to proposal of this rule, EPA considered going forward with a rule that applied to all source categories. However, the complexity of that task meant that a rule could not be developed in a short time frame, a fact that posed unique and serious difficulties for one source category, utilities. While the commenters favoring expansion of this rule to all source categories are accurate in their claims that sources outside utilities face CAA-mandated pollution control projects, utilities alone are singled out to participate in the 1990 Amendments' new acid rain program. This program requires that units subject to phase I of the program meet SO_2 reduction limits by 1995. Given the size, complexity, and expense of scrubbers and other SO_2 pollution control technologies, the affected utilities need guidance today as to the title I implications of their control strategies. While other sources may soon have new control requirements imposed on them, utility sources face the most immediate need for clarification of their NSR responsibilities.

In addition, EPA also had high confidence that a workable "future-actual" methodology could be developed for the utility industry for all changes that did not involve construction of a new unit or replacement of an existing unit. The source population is relatively small and the technology in use is relatively uniform. Moreover, utility sources are largely regulated by PUC's which evaluate anticipated utility growth as part of the regulatory oversight process. The fact of Public Utility Commission (PUC) review helps ensure the reliability of utility projections of future operating conditions. The EPA anticipates that NSR permitting authorities will be able to draw upon PUC proceedings in evaluating utility claims of future utilization.

In addition, the emissions monitoring provisions of title IV requires that continuous emissions monitoring data or other highly accurate methods for reporting actual emissions will be used for all affected sources. This will assure that actual emissions data will be readily available for utility sources subject to today's rule. In the rulemaking which EPA intends to undertake by early summer, EPA will address the precise applicability of the pollution control project exclusion and of the actual to future actual methodology to non-utility source categories.

IV. Administrative Requirements

A. Executive Order (E.O.) 12291

Under E.O. 12291, EPA must judge whether a regulation is a "major rule" and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. This ruling is not a major rule because it will reduce the economic costs of meeting the requirements of the CAA. However, this ruling was submitted to the Office of Management and Budget (OMB) for review. Written comments from OMB to EPA and any EPA response are included in Docket A–90–06.

B. Paperwork Reduction Act

The proposal package stated that no additional public reporting burden will result from this ruling. That is still the case despite final rule requirements for reporting certain data to agencies for 5 years following a change and for documenting excluded demand growth, because this information is already required by other provisions of the law and the final rule in doing so is providing exclusions for the affected sources and the net result is a decrease in these source's public reporting burden. All information collection requirements of the Federal NSR and NSPS regulations have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and have been assigned OMB control numbers 2060–0003 for NSR, and 2060–0023, 2060–0026 and 2060–0072 for NSPS. The effect of this rule would be a reduction in paperwork related to complying with NSR and NSPS requirements, since this ruling provides additional clarification as to physical and operational changes that may be excluded from these requirements.

C. Economic Impact Assessment

The requirement for performing an Economic Impact Assessment under section 317 of the CAA (42 U.S.C. 7617), does not apply to the amendments EPA is promulgating today. Section 317 applies only to "revisions which the Administrator determines to be substantial revisions." The promulgated amendments are not substantial revisions because they relieve current regulatory burdens.

D. Regulatory Flexibility Act Certification

As noted in the proposal notice, this action is not subject to the certification provisions of section 605(b) of the Regulatory Flexibility Act because this rule will result in a reduction of administrative costs and no increase in control costs, therefore having no significant impact on industry.

E. Effective Date

As stated earlier in this notice, this rule is effective immediately upon publication in the **Federal Register**. The EPA has concluded that, under section 307(d)(1) of the CAA, the requirement of sec. 4(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), for a 30-day waiting period before making a rule effective is not applicable.

F. Federalism Implications

Under E.O. 12612, EPA must determine if a rule has federalism implications (i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). For those rules which have federalism implications, a Federalism Assessment is to be made. The EPA's determination is that there are no federalism implications; these are relatively minor changes to existing Federal law and regulations.

The executive order also requires that agencies, to the extent possible, refrain from limiting the State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible. Since the rule is a direct effort to ensure implementation of the 1990 Amendments, EPA considers all of the above requirements to be met.

Lists of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Coal Technology projects, Hydrocarbons, Intergovernmental relations, Lead,

Nitrogen dioxide, NSR, Ozone, Particulate matter.

40 CFR Part 52

Air pollution control, Carbon Monoxide, Clean Coal Technology projects, Hydrocarbons, Lead, Nitrogen dioxide, NSR, Particulate matter, Repowering, Sulfur oxides.

40 CFR Part 60

Air pollution control, Carbon monoxide, Clean Coal Technology projects, Hydrocarbons1 Lead, Nitrogen dioxide, NSPS, Particulate matter, Repowering, Sulfur oxides.

Dated: May 20, 1992.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, parts 51, 52, and 60 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7411, 7470–7479, 7491, 7501–7508, 7601 and 7602, as amended by the 1990 Amendments, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990); 402, 409, 415 of the CAA as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 51.165 is amended by revising paragraph (a)(1)(xii)(D) and by adding paragraphs (a)(1)(v)(C)(*8*), (a)(1)(v)(C)(*9*), (a)(1)(xii)(E), (a)(1)(xx), (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxiii), (a)(1)(xxiv), (a)(1)(xxv) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(v) * * *

(C) * * *

(*8*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*i*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*ii*) The reviewing authority determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*9*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*i*) The State Implementation Plan for the State in which the project is located, and

(*ii*) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

* * * * *

(xii) * * *

(D) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (a)(1)(xii)(E) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(E) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

* * * * *

(xx) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(B) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(xxii) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(xxiv) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) *Pollution control project* means any activity or project at an existing electric utility steam generating unit for

purposes of reducing emissions from such unit. Such activities or projects are limited to:

(A) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(B) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(C) A permanent clean coal technology demonstration project conducted under title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(D) A permanent clean coal technology demonstration project that constitutes a repowering project.

3. Section 51.166 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii) (*h*) through (*k*), (b)(21)(v), and (b) (30) through (37) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The reviewing authority determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located: and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

* * * * *

(30) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(31) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal re-burning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the

representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(33) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(34) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(35) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(36) (i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The reviewing authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(37) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

Authority: 42 U.S.C. 7401–7642 as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), unless otherwise noted.

2. Section 52.21 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*) through (*k*), (b)(21)(v), and paragraphs (b)(31) through (b)(38) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Administrator if he determines such a period to be more representative of normal source post-change operations.

* * * * *

(31) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW

electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project, including, but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(33) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(34) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37) (i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 52.24 is amended by revising paragraph (f)(13)(iv) and by adding paragraphs (f)(5)(iii)(*h*) and (*i*), (f)(13)(v) and paragraphs (f)(19) through (24) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(5) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality

impact analysis in the area conducted for the purpose of title I, if any, and

(2) The Administrator determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

* * * * *

(13) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (f)(13)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Administrator if he determines such a period to be more representative of normal source post-change operations.

* * * * *

(19) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(21) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(22) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(23) *Clean coal technology demonstration project* means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(24) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project including, but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (Nov. 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 60.2 is amended by adding the following definitions in alphabetical order:

§ 60.2 Definitions.

* * * * *

Clean coal technology demonstration project means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded

through appropriations for the Environmental Protection Agency.

* * * * *

Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Reactivation of a very clean coal-fired electric utility steam generating unit means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

Repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

* * * * *

3. Section 60.14 is amended by adding paragraphs (h) through (l) to read as follows:

§ 60.14 Modification.

* * * * *

(h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(j) (1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.

(2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A *temporary clean coal control technology demonstration project*, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

[FR Doc. 92-16366 Filed 7-20-92; 12:01 pm]
BILLING CODE 6560-50-M

federal register

Tuesday
July 21, 1992

Part IV

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840-AB31

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the regulations for the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965, as amended (HEA). These regulations modify provisions governing the campus-based programs, clarify existing policy, and make other necessary changes.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the date these regulations become effective, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard P. Coppage or Michael J. Oliver, Campus-Based Programs Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., ROB-3, room 4018, Washington, DC 20202-5447. Telephone: (202) 708-4690. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-377-8339. (In the Washington, DC, 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.)

SUPPLEMENTARY INFORMATION: On March 13, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for the campus-based programs in the **Federal Register** (56 FR 10742-10754). The regulations have been revised in accordance with public comments on the proposed rule.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those proposed changes and identifies the pages of the preamble to the NPRM on which discussion of those changes may be found:

The addition of the definitions of "full-time undergraduate student" and "full-time graduate or professional student" under § 674.2(b) of the Perkins Loan Program, and § 675.2(b) of the College Work-Study Program (page 10742).

Clarification under § 674.31(e)(2) that an institution may still capitalize the penalty charge assessed on National Defense and Direct Student Loan borrowers during the repayment period (page 10742).

A proposal to delete the word "regular" in the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in §§ 674.31, 674.32, 674.34, 674.35 and 674.36 (page 10742).

Clarification under §§ 674.43(a) and 674.47(a)(2) that certain costs of documented telephone calls to demand repayment of overdue loan amounts may be charged to the Perkins Loan Fund (page 10742).

A proposal to revise the promissory notes found in Appendices A, B, C, and D of part 674, to correct typographical errors made during the printing of the previous regulations, and to clarify certain other requirements (page 10742).

A proposal to clarify the CWS Federal share limitations (page 10743).

Major Changes to the NPRM

A few significant changes have been made since the publication of the NPRM:

- The proposal to delete the word "regular" in the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in §§ 674.31, 674.32, 674.34, 674.35 and 674.36 of the Perkins Loan regulations has been rescinded.
- A new National Direct Student Loan and Perkins Loan cancellation provision for law enforcement or corrections officer service provided by the Crime Control Act of 1990 (Pub. L. 101-647) has been included in the sample promissory notes.
- The proposed language to limit to 10 percent an institution's expenditures of CWS funds received by the institution for the Community Service Learning (CSL) Program has been rescinded. However, the language has been clarified regarding the Federal share applicable to students working under the CSL Program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 47 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Perkins Loan Program

Section 674.2(b) Full-Time Graduate or Professional Student

Comment: The Secretary received several comments on the proposed provision in § 674.2(b) that would define the term "full-time graduate or professional student." All commenters supported the change. They felt that the proposal was similar to the method used by the Guaranteed Student Loan programs, and that this is an advisable approach that allows an institution to determine who may be classified as a full-time graduate or professional student.

Discussion: The Secretary has determined that it is in the best interest of the Perkins Loan program to allow institutions to determine when a student is a full-time graduate or professional student as what constitutes a full-time academic workload differs by institution and program, as well as by curriculum and practice.

Changes: None.

Section 674.31 Promissory Note

Comments: Several commenters were in favor of the clarification on the capitalization of penalty charges assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

Discussion: The Secretary agrees with the commenters that this section should clarify that institutions still may capitalize the penalty charge assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

Changes: None.

Section 674.31 Promissory Note

Section 674.32 Special Terms: Loans to Less Than Half-Time Student Borrowers

Section 674.33 Repayment

Section 674.34 Deferment of Repayment—Perkins Loans

Section 674.35 Deferment of Repayment—Direct Loans Made on or After October 1, 1980

Section 674.36 Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans

Comments: Several commenters questioned the proposed deletion of the word "regular" from the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in these sections. The deletions would allow students who were not pursuing a degree or certificate to receive a deferment for attending an institution at least half-time.

Discussion: The Secretary agrees with the commenters that the determination of when a repayment period begins and when a student qualifies for a deferment for attending an institution should be tied into the student's status as a regular student. Under 34 CFR 668.7(a)(1) a student is required to be a regular student in order to be eligible to receive a loan. The word "regular" originally was considered not needed in §§ 674.31, 674.32, 674.33, 674.34, 674.35 and 674.36 because all eligible students are regular students. However, the proposed deletion of the word "regular" would have allowed students no longer enrolled for the purpose of obtaining a degree, certificate, or other recognized credential to receive an advantage in determining when a repayment period begins or to qualify for a student deferment. This was not the intention of the proposed deletion.

Changes: The final regulations reflect any necessary additions of the word "regular" in the above listed sections for consistency. The final regulations do not delete the word "regular" as proposed in the NPRM.

Section 674.38(a)(1) Postponement of Loan Repayments in Anticipation of Cancellation

Comments: Many commenters supported the addition of §§ 674.53 and 674.54, teacher cancellation, to the list of reasons for postponement of loan repayments in anticipation of cancellation. One commenter suggested that the section be expanded to include loan cancellation for health professionals who agree to work in a medically underserved area. Another commenter requested uniform guidelines for handling postponement in anticipation of cancellation requests.

Discussion: The Secretary is revising § 674.38(a)(1) to crossreference § 674.53 and § 674.54. These sections inadvertently were not listed in the December 1, 1987 regulations. The Department has no statutory authority to provide loan cancellation for health professionals who agree to work in a medically underserved area. The Department has provided guidelines for handling postponement in anticipation of cancellation requests in the Federal Student Financial Aid Handbook.

Changes: None.

Section 674.42(a)(2)(x) Contact With the Borrower

Comments: The Secretary received many comments on the inclusion of this provision in the regulations. All commenters felt that even though the provision is in the Higher Education Act of 1965, as amended, that the additional information to be provided during the exit interview about average loan indebtedness seems irrelevant and presents an administrative burden that has no effect on reducing defaults or in promoting a borrower's increased understanding of loan indebtedness.

Discussion: Section 485(b)(1) of the Higher Education Act of 1965, as amended, requires that an institution provide, during its exit counseling, general information about the average indebtedness of students who have loans at that institution under the Perkins Loan Program. The Secretary feels that by providing this information to students, the institution will help students to be aware of having loans and of their responsibilities to repay the loans. The Secretary believes it is appropriate to state this requirement expressly in the regulations so that institutions will be aware of the statutory requirement.

Changes: None.

Section 674.45(c)(1)(iii) Collection Procedures

Comments: One commenter suggested further clarification should be made to this section by cross-referencing the litigation procedures section.

Discussion: The Secretary agrees with the commenter and has decided to make further clarifying changes in this section.

Changes: The Secretary has added a cross-reference to 34 CFR 674.46.

Section 674.43(a) Billing Procedures

Section 674.47(a)(2) Costs Chargeable to the Fund

Comments: The Secretary received several comments in support of the revisions to clarify that the costs of all documented telephone calls made during the billing cycle to demand payment of overdue amounts on the loan, that are not recovered from the borrower, may be charged to the Perkins Loan Fund.

Additionally, one commenter stated that the proposed revision was impractical to implement because a number of office staff members do loan collection and each has a separate telephone line. The commenter recommended that an institution be allowed to charge the Perkins Loan Fund average costs to be determined by annual calculations as backup for an auditor.

Discussion: The Secretary believes that making telephone calls and working with the debtor over the telephone, as soon as the borrower is overdue in making a payment, is in keeping with the Department's goal of using all effective methods of collection. The Secretary has determined that only actual costs may be charged to the Fund for telephone calls made during the billing cycle. The Secretary disagrees that it is difficult for an institution to track the actual costs of telephone calls made during the billing cycle and, therefore, an institution may not charge average costs to the Fund.

Changes: None.

Section 674.49 Bankruptcy of Borrower

Comments: Many commenters were in favor of the Crime Control Act of 1990 (Pub. L. 101–647), which provides that the period of time in which a borrower cannot discharge a loan for chapter 7, 11, 12 and 13 bankruptcies has been extended from 5 years to 7 years. The commenters all suggested that the regulations should be revised to be consistent with the current law.

Discussion: The Secretary agrees that the final regulations should reflect the changes to the bankruptcy provisions found in the Crime Control Act of 1990. In addition, the Secretary notes that additional changes were made to the Bankruptcy Code (11 U.S.C. 1328(a)) by section 3007 of the 1990 Omnibus Budget Reconciliation Act (OBRA). The Secretary therefore feels that the final regulations also should be amended to reflect these additional changes.

Changes: The final regulations extend from 5 years to 7 years the period of time in which a borrower cannot have a loan discharged for chapter 7, 11, 12 and 13 bankruptcies as provided in the Crime Control Act of 1990. Further, the final regulations reflect the changes made to the Bankruptcy Code by section 3007 of OBRA. The regulations provide that a discharge under 1328(a) of the Bankruptcy Code does not discharge an education loan unless the loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition.

Appendices—Promissory Notes

Comments: The Secretary received several comments concerning the promissory notes. Two commenters were disappointed that the provision regarding loan cancellation for full-time law enforcement and correction officers was not included in the NPRM. Some commenters brought to the attention of the Secretary some typographical errors, and one commenter agreed with all the proposed changes.

Discussion: The Secretary thanks the commenters for their careful review and agrees that the new cancellation provision provided by the Crime Control Act of 1990 should be incorporated in the promissory notes. To provide the

public with an opportunity to comment in a separate NPRM, the Secretary intends to propose regulations concerning the requirements for a borrower to qualify for the new loan cancellation provision.

Changes: The loan cancellation provision for service as a law enforcement or corrections officer has been included in the promissory note. All typographical errors have been corrected.

College Work-Study (CWS) Program

Section 675.2(b) Full-Time Graduate or Professional Student

See comment and discussion in the preamble under § 674.2(b).

Section 675.26 CWS Federal Share Limitation

Comments: Many commenters disagreed with the proposed change and were concerned that the proposed wording could be interpreted now to exclude students from being employed under CWS during a period of nonenrollment. Some commenters wanted an institution to be able to apply a Federal share toward student wages under the CSL program after 10 percent of the institution's CWS funds were expended for CSL.

Discussion: The Secretary, based on the comments received, agrees that students may be employed under CWS during periods of nonenrollment. Also, revisions clarify that an institution may pay student wages under the CSL program by applying a 90 percent Federal share with up to 10 percent of the institution's CWS funds. Any student wages under the CSL program paid in excess of 10 percent of the institution's CWS funds must be paid by applying the regular CWS Federal share.

Changes: The Secretary, in amending § 675.26(a)(1) by deleting the word "enrolled" before the word "student", has clarified that students may work under CWS during periods of nonenrollment. The regulations have been changed to reflect more accurately the language in the statute regarding the CWS Federal share limitations.

Section 675.28—Community Service Learning Program

Comments: Several commenters are concerned about the proposed language regarding the amount of its CWS allocation that an institution may use to employ students under the CSL program. One commenter believed that if the purpose of the CSL program is to give students the opportunity to work in a setting that offers work-learning opportunities that relate to their educational or vocational goals, that it would be inappropriate for the Department to limit to 10% of the CWS allocation the amount that institutions can expend for the CSL program. Another commenter expressed the opinion that the proposed change was contrary to current statutory language.

Discussion: The Secretary, after further review, agrees that an institution is not restricted in the amount of CWS funds it may use for student wages under the CSL program.

Changes: The proposed change to § 675.28(a) has been rescinded.

Supplemental Educational Opportunity Grant Program

Section 676.16(f) Payment of an SEOG

Comments: Several commenters supported the deletion of the reference to NDSL, as the change would make the SEOG regulations consistent with the Perkins Loan regulations.

Discussion: The Secretary has amended the SEOG regulations to be consistent with the Perkins Loan regulations.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education, Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; and 84.063 Pell Grant Program)

Dated: July 13, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.1 is amended by revising paragraph (b)(1) to read as follows:

§ 674.1 Purpose and identification of common provisions.

* * * * *

(b) (1) The Perkins Loan Program, authorized by Title IV–E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

* * * * *

3. In § 674.2, paragraph (b) is amended by adding the definition of *Full-time graduate or professional student* after the definition of *Financial need;* by revising the title of *Full-time student* to read *Full-time undergraduate student* and adding in the first sentence the word "undergraduate" after the word "enrolled" and before the word "student"; and by removing "38" in paragraph (2) of newly designated *Full-time undergraduate student* and adding, in its place, "36" to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by that institution according to its own standards and practices.

* * * * *

4. Section 674.8 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

§ 674.8 Program participation agreement.

* * * * *

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

* * * * *

(3) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

* * * * *

§ 674.18 [Amended]

5. In § 674.18, paragraph (b)(4) is amended by adding "Pell Grant," before "CWS".

6. Section 674.19 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) * * *

(i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

* * * * *

7. Section 674.31 is amended by revising paragraphs (b)(2)(i)(B), (b)(3) and (b)(5)(iii)(A) to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) For Direct Loans made before October 1, 1980 and Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

* * * * *

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

* * * * *

(5) * * *

(iii) * * *

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

* * * * *

8. Section 674.32 is amended by revising paragraph (a)(2)(ii) and the authority citation to read as follows:

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) * * *

(2) * * *

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

* * * * *

(Authority: 20 U.S.C. 1087dd)

9. Section 674.33 is amended by revising paragraphs (a)(1) and (a)(3)(iii) to read as follows:

§ 674.33 Repayment.

(a) * * *

(1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

* * * * *

(3) * * *

(iii) Accrued interest.

* * * * *

10. Section 674.34 is amended by revising paragraphs (b)(1), (c)(3), (c)(4), (c)(5), (d)(3) introductory text, (d)(4) introductory text, (d)(4)(iii), and (e)(2) to read as follows:

§ 674.34 Deferment of repayment—Perkins loans.

* * * * *

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) * * *

(3) A Peace Corps volunteer (see § 674.57);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.57);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

* * * * *

(d) * * *

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

* * * * *

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

* * * * *

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

* * * * *

(e) * * *

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

* * * * *

11. Section 674.35 is amended by revising paragraphs (b)(1), (c) introductory text, (c)(3), (c)(4), and (g) to read as follows:

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

* * * * *

(b) (1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

* * * * *

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

* * * * *

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

* * * * *

12. Section 674.36 is amended by revising paragraphs (b)(1), (c)(3), and (d) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

* * * * *

(b) (1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period

on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) * * *

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

* * * * *

(d) The institution shall exclude the deferment periods described in paragraphs (b) and (c) of this section when determining the 10-year repayment period.

* * * * *

13. Section 674.38 is amended by revising paragraph (a)(1) to read as follows:

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) * * *

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57 or § 674.58.

* * * * *

14. Section 674.42 is amended by adding a new paragraph (a)(2)(x) and revising paragraph (b)(1)(i) to read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(2) * * *

(x) General information with respect to the average indebtedness of students who have loans at that institution under Part E of the Higher Education Act of 1965, as amended.

* * * * *

(b) *Contact with the borrower during the initial and post-deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980 and Perkins loans), the institution shall contact the borrower three times within the initial grace period.

* * * * *

15. Section 674.43 is amended by revising paragraphs (a) introductory text, and (b)(3) introductory text to read as follows:

§ 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

* * * * *

(b) * * *

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

* * * * *

16. Section 674.45 is amended by revising paragraphs (c)(1) introductory text, (c)(1)(i) and (ii)(B), and adding a new paragraph (c)(1)(iii) to read as follows:

§ 674.45 Collection procedures.

* * * * *

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) * * *

(A) * * *

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.

* * * * *

17. Section 674.47 is amended by revising paragraph (a)(2) to read as follows:

§ 674.47 Costs chargeable to the Fund.

(a) * * *

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

* * * * *

18. Section 674.49 is amended by revising paragraphs (c) (1), (2) and (3), (e)(4)(i), (f) introductory text, (f)(2), (f)(2)(ii)(A) and (f)(3), (h)(1) (i) and (ii) to read as follows:

§ 674.49 Bankruptcy of borrower.

* * * * *

(c) * * *

(1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than seven years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

* * * * *

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after—

* * * * *

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

* * * * *

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition, and

* * * * *

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding

periods of deferment, before the filing of the petition, and

(B) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

* * * * *

(h) * * *

(1) * * *

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than seven years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed; or

(ii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

* * * * *

§ 674.50 [Amended]

19. In § 674.50, paragraph (c)(6) is amended by changing the word "deferred" to read "deferment".

20. In § 674.52, paragraph (d) is revised to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

* * * * *

§ 674.57 [Amended]

21. In § 674.57, paragraph (a)(2) is amended by adding after "1973" the words "(ACTION programs)".

22. Appendix A to part 674 is revised to read as follows:

Appendix A to Part 674—Promissory Note—Perkins Loan

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning nine (9) months after the date I cease to be at least a half-time regular student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3) (A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5) (A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5) (B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5) (A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled payments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services); in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

XI. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XII. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XIII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIV. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XVI. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVII. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____ 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

_____

Social Security Number (borrower must provide)

_____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner

_____

[(seal)]

Date _____ 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

_____

Social Security Number (cosigner must provide)

_____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd)

* 23. Appendix B to part 674 is revised to read as follows:

Appendix B to Part 674—Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning six (6) months after the date I cease to be at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense, and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent for the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another Institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None".)

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature _____[(seal)]

Date _____, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner _____[(seal)]

Date _____, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd.)

24. Appendix C to part 674 is revised to read as follows:

Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraphs may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund

created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the Annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine (9) months from the date this loan is made, or if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), 111(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments as determined by the Institution. I understand that if my monthly payment for all loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayment if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act, or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

XI. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XII. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XIII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIV. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XVI. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVII. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner _____ [(seal)]

Date _____, 19_____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

25. Appendix D to part 674 is revised to read as follows:

Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine (9) months from the date this loan is made, or, if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I

repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX, and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraphs VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the fifth complete year of that service.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change In Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU HAVE READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner

_____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and ZIP Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. In § 675.2, paragraph (b) is amended by adding the definition of *Full-time graduate or professional student* after the definition of *Financial need;* by revising the title of *Full-time student* to read *Full-time undergraduate student;* and by adding in the first sentence of the definition of *Full-time undergraduate student* the word "undergraduate" after the word "enrolled" and before the word "student" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by the institution according to its own standards and practices.

* * * * *

§ 675.16 [Amended]

3. In § 675.16, paragraph (b)(1) is amended by removing the word "or" and adding, in its place, the word "of" before the word "his", and paragraph (b)(3) is amended by removing the word "or" and adding, in its place, the word "of" before the word "prepaid".

§ 675.18 [Amended]

4. In § 675.18, paragraph (a)(4) is amended by removing the word "allocation" and adding, in its place, the word "program" after "SEOG".

§ 675.22 [Amended]

5. In § 675.22, paragraph (b)(6) is amended by removing the word "dlobbying" and adding, in its place, the word "lobbying".

§ 675.23 [Amended]

6. In § 675.23, paragraph (b)(2)(ii) is amended by removing the word "by" and adding, in its place, the word "be" after the word "otherwise".

7. Section 675.26 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii) and (a)(2) to read as follows:

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student who is employed other than by a for-profit organization as described in § 675.23 may not exceed—

* * * * *

(ii) 90 percent under a community service learning program described in § 675.28, with respect to the amount paid to students under the community service learning program from up to 10 percent of the institution's cumulative CWS allocation and reallocation for an award year. The Federal share of CWS compensation paid to students under a community service learning program from the excess over 10 percent of the institution's CWS allocation and reallocation for an award year may not exceed the limitations specified in § 675.26(a)(1)(i).

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award

years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years.

* * * * *

8. Section 675.28 is amended by revising paragraphs (a), (b)(2) and (c)(2)(ii) to read as follows:

§ 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve, or expand services for low-income individuals and families, or to solve particular problems related to the needs of low-income individuals.

(b) * * *

(2) Provides students with work-learning opportunities, to the maximum extent practicable, that relate to their educational or vocational programs or goals.

(c) * * *

(2) * * *

(ii) May include activities related to such fields as health care, education (including tutorial services), child care, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

* * * * *

9. Section 675.34 is amended by revising paragraph (a)(2) to read as follows:

§ 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.

(a) * * *

(2) A nonprofit organization for a community services job location and development program only. The nonprofit organization must have professional direction and staff.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.2 [Amended]

2. In § 676.2, paragraph (b) is amended by revising the title of *Full-time student* to read *Full-time undergraduate student;* and by adding in the first sentence the word "undergraduate" after the word "enrolled" and before the word "student".

§ 676.3 [Amended]

3. In § 676.3, paragraph (b) is amended by removing the word "of" and adding, in its place, the word "or" after the word "allocation".

§ 676.16 [Amended]

4. In § 676.16, paragraph (f) is amended by removing the words "and NDSL" after "SEOG".

§ 676.18 [Amended]

5. In § 676.18, paragraph (a)(3) is amended by removing the word "allocation" and adding, in its place, the word "program" after "CWS".

[FR Doc. 92–16854 Filed 7–20–92; 12:01 pm]
BILLING CODE 4000–01–M

federal register

Tuesday
July 21, 1992

Part V

Department of Transportation

Research and Special Programs Administration

Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-5(R)]

Application by Chemical Waste Transportation Institute for Preemption Determination As To Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination whether the Uniform Hazardous Waste Manifest promulgated by the Illinois Environmental Protection Agency (IEPA) is preempted by the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations issued under the HMTA.

DATES: Comments received on or before September 4, 1992, and rebuttal comments received on or before October 19, 1992, will be considered before an administrative determination is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–5(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (a) Mr. Kevin Connors, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036, and (b) Mr. William C. Child, Director, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, Illinois 62796–9276. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Connors and Child at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Kathleen S. Molinar, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

I. Background

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of state and local laws. "[U]niformity was the linchpin in the design of" the HMTA. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA (49 App. U.S.C. 1811(a)) explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. § 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. § 1804(b), dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect * * *" 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application is filed, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate

Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policies set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

II. CWTI'S Application for a Preemption Determination

With its June 12, 1992 letter, CWTI applied for a determination that IEPA's Uniform Hazardous Waste Manifest is preempted by the HMTA. The text of CWTI's application is reproduced as appendix A to this notice. (The appendices to CWTI's application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4453.)

III. Comments

All comments should be limited to the issue of whether the IEPA Uniform Hazardous Waste Manifest is preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in I, above. Comments should also address the issue of whether the IEPA Uniform Hazardous Waste Manifest is "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201 through 107.211.

Issued in Washington, DC on July 15, 1992.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

Appendix A—Before the United States Department of Transportation Office of Hazardous Materials Safety

Application of the Chemical Waste Transportation Institute To Initiate a Proceeding To Determine That the Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency is Preempted by the Hazardous Materials Transportation Act

June 12, 1992.

Application of the Chemical Waste Transportation Institute To Initiate a Proceeding To Determine That the Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency is Preempted by the Hazardous Materials Transportation Act

Interest of the Petitioner

The Chemical Waste Transportation Institute (CWTI) is part of the National Solid Wastes Management Association (NSWMA), a not-for-profit association that represents approximately 2,000 waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members are both private and for hire carriers that operate in interstate and intrastate commerce, including points to and from Illinois. To the extent that member companies operate in Illinois and are subject to the terms of the IEPA manifest form attached as opposed to the Uniform Manifest (EPA Form 8700–22) and the Continuation Sheet (EPA Form 8700–22A), these members are forced to choose between conformance with the requirements of the IEPA or the Department of Transportation (DOT) and the Environmental Protection Agency (EPA).

Background

The NSWMA on behalf of the CWTI originally petitioned for a ruling of inconsistency on April 12, 1990 and, in light of substantial enhancement to RSPA's preemption authority occasioned by the enactment of Public Law 101–615, resubmitted our petition on May 16, 1991.[1] At that time, we were advised that the matters at issue in the petition were subject to the preemption provisions of Public Law 101–615, section 4 which compel RSPA to issue binding determinations of preemption unless the challenged state requirement is "substantively the same as" and federal requirement. With the May 13, 1992 publication of the final rule defining "substantively the same as" standard, RSPA is in a position to fully evaluate the merits of this petition.

Basis for the Application

Since the CWTI refiled its application on May 16, 1991, IEPA has voluntarily addressed one of the concerns raised in the April 12th petition.[2] Nevertheless, the IEPA revision still falls short of the federal standards established pursuant to a joint DOT/EPA rulemaking [3] that are set forth at 40 CFR part 262, Appendix and referenced at 49 CFR 172.205. The remaining inconsistencies pertain to (1) a limitation on the allowable abbreviations to record volumetric and weight units of measure and (2) the IEPA abandonment of Continuation Sheets. Each of these deviations is in conflict with the preemptive standard set forth at 49 CFR 171.3(c) and, to the extent that the Uniform Manifest is used as a shipping paper [4] the "substantively the same as" preemptive standard. As such, these inconsistent aspects of the form are a violation of the Hazardous Materials Transportation Act, as amended (HMTA) and the hazardous materials regulations (HMRs).

Authority for a Determination of Preemption

Heretofore, the CWTI petition before RSPA for a ruling of inconsistency in the matter styled IRA–51 was based on the fact that the IEPA manifest cannot satisfy the "dual compliance" and "obstacle" tests which are set forth in section 112(a) of the HMTA. With the finalization of docket HM–207A, defining the "substantively the same as" preemptive standard, CWTI has yet another definitive and compelling test on which to base its claim that the IEPA manifest is expressly preempted by section 105(a)(4)(A).

- The IEPA Manifest Cannot Satisfy the "Dual Compliance" and "Obstacle" Tests Set Forth in Section 112(a) of the HMTA

Congress revised section 112(a) of the HMTA by including the "dual

[1] See docket IRA–51.

[2] See attached letter to Alan I. Roberts, Associate Administrator for Hazardous Materials Safety, RSPA, US DOT, from William C. Child, Manager, Division of Land Pollution Control, IEPA, dated December 17, 1991.

[3] See 49 FR 10490 (March 20, 1984).

[4] See 49 CFR 172.205(h). The Uniform Manifest may be used as a shipping paper. Inasmuch as the Uniform Manifest contains all of the information required to be present on a shipping paper and the Manifest must be carried with each hazardous waste shipment in the "same manner as required for shipping papers," virtually all hazardous waste shippers (generators) satisfy DOT shipping paper requirements through the Manifest. The only notable exception is hazardous waste transport by rail. Rail carriers are allowed to substitute waybills for the Uniform Manifest when transporting hazardous waste to a designated facility or to other non-rail and intermediate rail carriers provided certain conditions are met. These provisions were made so not to disrupt the normal intermodal/interlining operating practices of railroads. See 49 CFR 172.205(f) and 40 CFR 263.20(f).

compliance" and "obstacle" standards, previously used as regulatory standards for determining preemption, as explicit statutory grounds for a finding of preemption. As the RSPA noted in its preamble implementing the revised section 112(a) authorities, the original HMTA "did not define 'inconsistent' or provide any standards for determining what requirements were 'inconsistent.' " [5] Accordingly, the Department set forth by regulation two criteria for determining "whether a non-federal requirement was inconsistent with the HMTA or the regulations * * *" [6] The "dual compliance and obstacle" criteria were, of course, "originally established by Supreme Court decisions determining whether a conflict exists between a State and Federal statute in areas where Congress has not completely foreclosed State regulation." [7] In the 1990 amendments, Congress merely "adopted these standards proposed by the Department. The 'two standards [adopted] are the same requirements that are currently codified in regulations relating to inconsistency rulings.' H.R. Rep. No. 441, Pt. 1, 101st Cong., 2d sess. 49 (1990). Congress stated its intention to clarify the current preemption process 'by more clearly identifying the standards against which a determination of preemption is made. Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department.' H.R. Rep. No. 444, Pt. 2 101st Cong., 2d Sess. 25 (1990)." [8]

As RSPA has emphasized, while the scope of the "conflict" and "obstacle" tests has not changed, Congress clearly provided for "an affirmative statement of preemption" [9] in cases in which the tests are not met by state or local requirements. Accordingly, while all previous inconsistency rulings issued by the RSPA were merely advisory, the same tests must now be utilized, both by the RSPA and the courts, in making legally binding preemption determinations.

That the IEPA manifest flunks both the "dual compliance" and "obstacle" tests is clear. By creating its own version of the Uniform Manifest, IEPA has refused to abide by the terms of 49 CFR 171.3(c)(3) which specifically provides that "any requirement of the state * * * is inconsistent with this subchapter if it applies * * * differently from or in addition to the requirements of this subchapter concerning * * * [the] format or contents of—hazardous waste manifests." The DOT requirements also mandate that all hazardous waste manifests be prepared pursuant to the terms of 40 CFR 262.20. That provision sets forth appropriate abbreviations for allowable units of measure; prescribes that the total quantity of waste be entered on the Uniform Manifest or Continuation Sheet, in necessary, in sections 14 or 31 respectively; specifies the use of Continuation Sheets if additional space is required for the DOT hazardous materials description and related information or if more than two transporters are required; and provides that states may not alter or request information differing from the federal standard in the numbered sections of the Uniform Manifest.

In contravention of these requirements, the IEPA form limits the allowable abbreviations for the indication of units of measure to either "G" for gallons or "Y" for cubic yards and forbids the use of decimals or fractions in describing the total quantities of waste by gallons or cubic yards that is entered in item 13 of the manifest. These requirements for designating units of measure and the total quantity of waste lead, when viewed together, to disingenuous results. For example, a transporter who hauls one drum of a solid hazardous waste (approximately 0.3 cubic yards) would be forced to indicate on the IEPA manifest a total quantity of "0", given that quantities must be rounded to the nearest whole number.[10]

The IEPA manifest also rejects the Uniform Manifest's mandate to use Continuation Sheets in certain situations. The IEPA instead instructs generators who would otherwise prepare a Continuation Sheet to complete a separate Uniform Manifest form. The Uniform Manifest requirement does not permit states to utilize a "second manifest" option in lieu of the Continuation Sheet which is intended to be attached to the Uniform Manifest form.

The IEPA manifest form cannot be reconciled with the Uniform Manifest adopted in a joint rulemaking by DOT and the EPA. The purpose of the Uniform Manifest was to eliminate the considerable confusion and unnecessary paperwork engendered by numerous, often conflicting manifest forms prepared by the states. While at present it is possible for states to require use of their own manifests in lieu of the Federal form, state-issued manifests may not require additional or different information other than what is permitted in the lettered sections of the Uniform Manifest. Not only is the IEPA manifest precisely the type on inconsistent state actions which is preempted by the HMTA and the HMRs, to the extent that it contradicts the Uniform Manifest, it stands as an obstacle to the accomplishment and execution of the purposes and objectives of the HMTA. If the IEPA manifest is permitted to stand, members of the CWTI who operate in interstate commerce will be faced with the need to comply with manifest requirements in Illinois that differ from those in other states. It was this reason—the possibility that states might enforce conflicting requirements—that prompted Congress to enact the HMTA and led to the promulgation by DOT and EPA of the Uniform Manifest. Moreover, unless the IEPA manifest is invalidated, other states may be encouraged to adopt manifest forms that differ in numerous ways from the Uniform Manifest. The mere possibility that disparate requirements could be imposed by other states mandates a finding of inconsistency.[11]

- Section 105(a)(4)(A) Expressly Preempts the IEPA Manifest Form

Public Law 101-615 section 105(a)(4) substantially strengthened federal preemption in the area of hazardous materials transportation. Among other things, the statute provides that unless a state or local requirement related to the "preparation, execution, and use of

[5] See 56 FR 8617 (February 28, 1991).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

[10] IEPA in prior correspondence to IRA-51 has suggests that the difficulties caused by the restriction of allowable quantity abbreviations and decimal or fraction notations could be overcome by classifying a solid as a liquid, so that in the case of the drum continuing 0.3 cubic yards of material that amount of waste would be reported in gallons, and the reclassification could then be clarified by a notation in item "J" of the IEPA manifest. Another commentator to IRA-51 suggested that an amount of waste under 1.0 for any unit of measure could be "rounded up" to 1.0 to avoid a "zero" quantity result. These suggestions must be rejected because they presume to alter the information requirements set forth in the number sections of the Uniform Manifest. Clearly, acceptance of the suggestions would set a dangerous precedent for the imposition of unique and onerous manifesting requirements. For example, the designation of solids as liquids would create considerable confusion in the event of an emergency response. Likewise, "rounding up" the quantity of waste would unnecessarily impose additional costs upon hazardous waste generators and transporters. Many states levy taxes on the quantity of waste moved. Finally, inaccurate quantity information on the Uniform Manifest would hinder enforcement efforts, and discourage accuracy in federal data collection activities dependent on the Manifest such as EPA's biennial reporting and capacity assurance plans.

[11] See IR 15, 49 FR 46,660 (Nov. 27, 1984); IR 14, 49 FR 46,656 (Nov. 27, 1984); and IR 5, 47 FR 51,991 (Nov. 16, 1982).

shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents" is "substantively the same" as the federal requirements, the non-federal requirement is flatly preempted. The IEPA form and requirements at issue here are clearly not "substantively the same" as the federal Uniform Manifest.

The fact that a transporter/carrier may choose to comply with RSPA's shipping paper requirements with some form other than the Uniform Manifest does not diminish the fact that the Uniform Manifest is a shipping paper. RSPA clearly considers the Uniform Manifest a shipping paper. Not only does the Uniform Manifest contain all information required by RSPA to be included on any shipping paper document and therefore would ipso facto be a "shipping paper," [12] but RSPA's requirements for the Uniform Manifest appear in the subpart to the HMRs dealing with shipping papers and, where state or local requirements are preempted because they differ from the federal standard and are applied only to hazardous waste as opposed to other hazardous materials, DOT modifies "shipping papers" to include "hazardous waste manifests." [13]

In the past, RSPA has on several occasions found similar state information and shipping paper requirements to be per se inconsistent with the HMTA.[14] Not only would it be highly unlikely that RSPA would reverse itself on the substance of these earlier rulings, but in light of RSPA's strengthened preemptive authority in certain critical areas of the HMRs, including shipping papers, RSPA is for all intents and purposes precluded from issuing other than a determination of preemption in this matter. As RSPA noted in its May 13, 1992 final rule defining and promulgating the "substantively the same as" preemption standard, "Congress intended to preempt the entire field of hazardous materials transportation in the [shipping paper] covered subject areas. RSPA believes that in the * * * subject areas, national uniformity is critical * * *. Any additional requirements, in excess of the Federal requirements, would not be 'substantively the same,' and would be preempted." [15] Only "editorial and other similar de minimis changes are permitted." [16] We submit that the IEPA requirements are not editorial nor are they de minimis.

Rebuttable Presumptions

In the interest of expediting this proceeding, following is a summary of defenses raised by the IEPA in support of its manifest in prior correspondence with the RSPA on IRA–51 and the Institute's response. We believe each defense is flawed and should be dismissed.

First, the fact that IEPA is not the only entity that uses a manifest which varies from the federal norm does not justify the Agency's actions. In fact, other states are watching the outcome of this proceeding either to continue existing inconsistent requirements or to impose new ones. Whether the IEPA form is the most egregious of these state manifest inconsistencies is immaterial. The fact is that the IEPA has impermissibly altered the Uniform Manifest and the IEPA form in its challenged aspects should be preempted. Absent such a determination, the signal to states would be that deviation is acceptable in contravention of the goals of the HMTA and the HMRs.

Second, the IEPA actions are not excused by Public Law 94–580 section 3009 (RCRA).[17] Section 3009, as amended in 1980, is limited to state authorization for the adoption of certain more stringent technical, design or performance standards for TSDFs than those promulgated by EPA pursuant to subtitle C of RCRA. The legislative history reveals that the 1980 amendment "would permit States to establish standards more stringent than Federal standards with regard to the selection of sites for the disposal of hazardous waste materials." [18] The sponsor of the amendment went on to explain that:

> The Act provides States with a framework for implementing hazardous waste treatment and disposal programs. However, it is inadequate in that it does not give States the opportunity to set standards more stringent than those provided by Federal authorities in establishing sites for disposal facilities * * * My amendment to [RCRA] corrects this deficiency by allowing states to adopt standards more stringent than the Federal standards when selecting sites for the disposal of hazardous waste materials.[19]

Accordingly, Congress did not provide that states could modify or abandon the Uniform Manifest or other transportation-related requirements and still be equivalent and consistent with the national program as required by RCRA Section 3006 which provides for federal authorization to states to administer their own hazardous waste management programs.[20] Illinois is an approved state. Indeed, EPA's own regulations implementing section 3006 make clear that "no other manifest form, shipping document or information, other than that required by federal law, may be required by the State to travel with the shipment." [21] Moreover, section 3003(b) of the RCRA mandates that the federal standard adopted by EPA by which states can judge the "consistency" and "equivalency" of their hazardous waste transportation programs for purposes of section 3006 is the HMTA and the HMRs as well as those items specifically mentioned in section 3003(a). Acceptance of IEPA's position would grant states carte blanche authority to abandon the Uniform Manifest.

Third, the CWTI has "standing" to bring this petition. Trade associations have frequently advanced the interests of their members by participating in HMTA inconsistency proceedings. Moreover, neither the HMTA nor HMRs seeks to apply the article III judicial concept of "injury in fact" as the basis for association standing. CWTI notes, however, that several decisions of the United States Supreme Court have made clear that an association has standing. Specifically, it is clear that an association has standing if one or more of its members have standing in their own right.[22] The CWTI members which operate in Illinois are, without question, affected by the manifest form at issue here.[23] No one has a truer or more

[12] See 49 CFR 172.200, 201, 202, 203, and 204.

[13] See 49 CFR 172 subpart C and 171.3(c), respectively.

[14] See for example IR 4, 47 FR 1231 (Jan. 11, 1982); and IR 19, 52 FR 24,404 (June 30, 1987).

[15] See 57 FR 20425 (May 13, 1992).

[16] *Id.*

[17] IEPA has in prior correspondence in the matter of IRA-51 justified its proscribing certain allowable units of measure because it is exercising its "more stringent than" authority. In fact, IEPA acknowledged in its original reply to the NSWMA petition (June 21, 1990) that "this explicit substitution was a continuation of Illinois' computerized manifest system that was begun in 1979." IEPA's limitation of allowable units of measure has noting to do with a desire to be more stringent than the federal, uniform requirements. It is a reflection of the fact that IEPA simply never conformed to the Uniform Manifest requirements when they were promulgated in 1984.

[18] See 125 Cong. Rec. S6824 (Daily Ed., June 4, 1979).

[19] Id. at S6825.

[20] See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (Section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Services.* v. *City of San Diego*, 687 F. Supp. 1436 (S.D. Cal. 1988) (Citing *Ensco*).

[21] See 40 CFR 271.10.

[22] See *Hunt* v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Also see *Warth* v. *Seldin*, 422 U.S. 490, 511 (1975).

[23] See 49 CFR 171.2(b) which provides that "no person may transport a hazardous materials in

Continued

defined stake in the outcome of the IEPA manifest petition than CWTI members who are compelled to use the form. Under established precedent, this traceable injury provides a judicially cognizable basis for standing.[24] Neither the claim asserted nor the relief requested here would require—even in a federal court—the participation of individual members of CWTI in order to address the legality of the IEPA manifest.[25]

Fourth, IEPA's claim that competent authority at EPA approved its form is without merit. EPA is not the administering agency regarding the Uniform Manifest. Public Law 94–580 section 3003(b) provides that the transportation—and the Uniform Manifest is above all else a transportation shipping document—of hazardous waste is subject to the HMTA. EPA must issue regulations pertaining to transportation of hazardous waste that are "consistent with the requirements of" the HMTA and the HMRs, not the other way around. In fact, EPA regulations provide that states, such as Illinois, authorized to administer their own hazardous waste program "must follow the Federal manifest format and may supplement the format to a limited extent subject to the consistency requirements of the [HMTA]." [26] IEPA previously acknowledged this point. In a letter filed by the IEPA with the RSPA in the matter of IRA–51, IEPA states that "it is [IEPA's] understanding that DOT no longer requires that use of a continuation sheet." [27] (Emphasis added).

IEPA bases its claim that EPA approved its form on a 1987 letter from staff of the Waste Characterization Branch [28] that cannot be squared with the subsequent correspondence from the then Acting Assistant Administrator of the EPA in 1989 which states that "(no) other manifest form, shipping document, or information, other than that required by federal law, may be required by the State to travel with the shipment." [Citing 40 CFR 271.10] This principle is also explicitly set out in EPA's rules on state program consistency at 40 CFR 271.4. Thus, any state requirement that a hazardous waste transporter carry documentation with shipments of hazardous waste is preempted by federal law." [29] Moreover, the 1987 letter deals only with the use of Continuation Sheets, not the IEPA limitation on authorized abbreviations for weights and volumes of hazardous waste. Nor is the EPA staff assessment about the rarity of instances in which more than two transporters are used supported by fact. Based on a survey conducted by CWTI in 1990, fully 9 percent of all hazardous waste shipped off-site is moved at some point by rail. The figure rises to 17 percent when rail shipments are compared only with hazardous waste that moves in interstate commerce. In almost every instance rail shipments include a motor carrier transfer at one or both ends of the journey. We submit that 17 percent or even 9 percent of volumes shipped is not "rare."

Fifth, the unique IEPA requirements cannot be justified by the notion that they "improve the manifest system." Government at all levels is interested in the improvement of regulatory requirements. For this reason, specific provision is made to petition government for rulemakings. In the case of the Uniform Manifest, an appropriate petition would be filed with the DOT pursuant to 49 CFR 106.31 and with the EPA pursuant to 40 CFR 260.20. In the instant case, the IEPA has not chosen to pursue these legal remedies, but instead has acted unilaterally to modify the federally authorized Uniform Manifest in circumvention of specific prohibitions to the contrary.

Sixth, the IEPA has requested that RSPA withhold its determination pending the outcome of a petition filed with the EPA by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). RSPA has no such authority nor should it have the desire to allow the continued enforcement of inconsistent, conflicting non-federal requirements. While IEPA's request asks RSPA to violate its mandate, the IEPA has not taken steps to address this situation in a timely and appropriate fashion. If the IEPA believes that the EPA and RSPA are not acting with appropriate speed on the ASTSWMO petition, the Agency could have filed a petition for a waiver of preemption with the RSPA, or simply mandated that its unique information requirements be entered in a "lettered" rather than a "numbered" section of the Uniform Manifest.[30]

Conclusion and Request for Relief

The Uniform Manifest plays a vital role in promoting the pervasive scheme of uniform regulation of hazardous materials transportation established by the HMTA and the HMRs. The Department should not hesitate to determine that these aspects of the IEPA manifest form constitute the type of inconsistent state action that is preempted by the HMTA and the HMRs. At the same time, the IEPA has chosen to ignore or bypass other approaches to achieve its ends.

The CWTI requests that a binding determination of preemption be issued invalidating the IEPA manifest to the extent that it:

(1) Prohibits the use of authorized abbreviations to indicate quantities of material shipped in a numbered section of the form; and

(2) Rejects the federal requirement that Continuation Sheets be utilized if more than two transporters are used to transport the waste or if more space is required for information set forth in section 11 of the Uniform Manifest form.

Certification

Pursuant to 49 CFR 107.205, I hereby certify that I have forwarded a copy of this application to: William C. Child, Director, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794–9276.

Kevin Connors,

Chairman.

[FR Doc. 92–17065 Filed 7–20–92; 12:01 pm]

BILLING CODE 4910–60–M

---

commerce unless that material is handled and transported in accordance with this subchapter * * *." The subchapter includes specific mandates concerning the use of the Uniform Manifest. See 49 CFR 171.3(c)(3) and 172.205. 49 CFR 172.3 provides that "this part [which among other things prescribes the requirements for shipping papers] applies to (1) each person who offers a hazardous materials for transportation and (2) each carrier by air, highway, rail or water who transports a hazardous material."

[24] See *Duke Power Co.* v. *Carolina Envtl. Study Group*, 438 U.S. 59 (1978); *American Insurance Association* v. *Selby*, 824 F. Supp. 267 (D.D.C. 1985) (Fact that only four members of trade association out of 174 suffered threat of injury did not deprive group of standing).

[25] See loc.cit. *Hunt* v. *Washington State Apple Advertising Comm'*, and *New York State Club Assn.* v. *New York*, 108 S. Ct. 2225 (1988).

[26] See 40 CFR 271.10(h).

[27] See attached letter to Carolyn Barley, a former EPA employee in the Waste Characterization Branch of the Office of Solid Waste, EPA, from Gregory T. Zak, Manager, Compliance Assurance Unit, IEPA, dates February 10, 1987

[28] See attached letter from Carolyn Barley, Waste Characterization Branch, Office of Solid Waste, EPA to Gregory Zak, IEPA, dated April 30, 1987.

[29] See attached letter from Jonathan Z. Cannon, Acting Assistant Administrator, EPA to Bruce Swonger, Chairman, CWTI, dated November 9, 1989.

[30] This latter option would only have been a remedy for the IEPA's insistence on limiting authorized unit of measurement abbreviations. Its desire to preclude use of the Continuation Sheet would have to wait for either a successful (1) Petition for a waiver of preemption or (2) conclusion to a petition for rulemaking.

federal register

Tuesday
July 21, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Yavapai-Prescott Indian Tribe and the State of Arizona Gaming Compact of 1992, executed on July 3, 1992.

DATES: This action is effective July 21, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Division Chief, Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: July 15, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–17106 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–02–M

federal register

Tuesday
July 21, 1992

Part VII

Department of Health and Human Services

Administration for Children and Families

Abandoned Infants Assistance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93551-921]

Abandoned Infants Assistance Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of financial assistance and request for applications to carry out demonstration projects to provide comprehensive services to abandoned infants and their families.

SUMMARY: The Administration on Children, Youth and Families announces the availability of funds to carry out demonstration projects to prevent the abandonment in hospitals of infants and young children, specifically those infants and young children perinatally exposed to a dangerous drug and those infants and young children infested with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; and to develop, implement and operate a comprehensive services program to address the needs of these children and their families.

DATES: The closing date for receipt of applications is September 4, 1992.

ADDRESSES: Applications should be sent to: FY 1992 Abandoned Infants Assistance Program, Administration for Children and Families, Division of Discretionary Grants, Hubert H. Humphrey Building, room 341-F.2, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Patricia Campiglia (202) 205-8657.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Background

Public Law (Pub. L.) 102-236, the Abandoned Infants Assistance Act Amendments of 1991 (the Act), amends Public Law 100-505, the Abandoned Infants Act of 1988 and was signed into law December 12, 1991. The purposes of the Act are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive services for these children and members of the biological family (see Definitions) for any condition that increases the probability of abandonment of an infant or young child, including foster family care services, case management services, family support services, parenting skills, in-home support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. In addition, the Secretary of the Department of Health and Human Services is required to carry out evaluation studies and submit reports to Congress on the estimated number of infants and young children abandoned in hospitals and an estimated cost of their care by all levels of government in providing housing and care for infants and young children abandoned in hospitals. The legislation also allows for the provision of technical assistance and training programs to support the planning, development and operation of the demonstration projects.

Definitions: The reauthorized legislation provides definitions for three terms, i.e., "abandoned infants and young children," "dangerous drug," and "natural family." The term "abandoned infants and young children" retains the definition stated in the original legislation (Pub. L. 100-505) and means infants and young children who are medically cleared for discharged from acute-care hospital settings, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. The terms "dangerous drug" and "natural family" are new. The term "dangerous drug" means a controlled substance as defined in section 102 of the Controlled Substances Act. Although Public Law 102-236 uses the term "natural family," the Administration on Children, Youth and Families prefers the term biological family. Therefore, the term biological parents/family/mother/father will be used for the remainder of the grant announcement. The term biological family shall be broadly interpreted to include biological parents, grandparents, family members, guardians, children residing in the household and individuals residing in the household on a continuing basis who are in a care-giving situation with respect to infants and young children covered under this Act. (42 U.S.C., 670 note, title I, section 103.)

B. Eligibility Applicants

Eligibility requirements are referenced under each priority area.

C. Availability and Allocation of Funds

Total combined funding under this announcement for fiscal year (FY) 1992 competitive grants under section 101 of the Act (42 U.S.C. 670 note), is approximately $8 million.

The Administration for Children and Families proposes to award approximately 20 grants in varying amounts up to $450,000 per budget year. Maximum award amounts are indicated in the discussion of each priority area. Applications under this announcement will be considered for:

- Competing Continuation Service Demonstration Projects—to continue the comprehensive service programs initially funded in FY 1990 by requiring documentation of continuing need for the project; to propose ways of improving service provision to meet the needs of abandoned infants and young children or those who are at risk of abandonment and their families; and to propose methods to continue the program evaluation and include summary evaluative data to date.
- New Start Service Demonstration Projects—to establish a comprehensive services program in jurisdictions not already served by the Abandoned Infants Assistance Program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment and their families; and to evaluate the program.
- Family Support Services for Grandparents and Other Relatives—to provide counseling, networking and supportive services to grandparents and other relatives who serve either as full or part-time caretakers to infants/toddlers who have been exposed to dangerous drugs pre-natally.

All applicants funded under this announcement will be required to provide information for special studies or evaluations funded by the Administration on Children, Youth and Families (ACYF).

All applicants funded under this announcement will be required to have a key person from the project staff and the evaluator attend a grantees' meeting held annually in Washington, DC.

The training and technical assistance services of the Abandoned Infants Assistance Resource Center on Drug, HIV and Medically Involved Children are available to all applicants funded under this announcement.

All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

D. Statement of the Problem

Concern continues to grow about the numbers of infants and young children infected with HIV and/or exposed to drugs during prenatal development. Also, there is concern about an increase in the number of women who are using illegal drugs during pregnancy with possible adverse consequences for their children.

In recent years, the link between female intravenous drug users, the HIV perinatal transmission rate and the subsequent development of the acquired immune deficiency syndrome (AIDS) in young children has presented an enormous challenge to pediatric health care workers. According to the most recent Centers for Disease Control (CDC) data, there are 3,140 AIDS-infected children under 13 years of age. This problem is expected to grow. The CDC estimated that 1.5 per 1,000 women giving birth in 1989 were HIV infected. Assuming a perinatal transmission rate of 30 percent, approximately 1,800 newborns acquired HIV during that year. AIDS is becoming increasingly prevalent and it is expected to become one of the main causes of death for children under four years of age. Children who are HIV positive or who have AIDS are frequently ill and require intensive and specialized care. The delivery of services to these children is often complicated because the children and their families live in communities that lack the necessary resources or because caregivers have difficulty accessing needed services. Further complicating the situation is the fact that all of these children have mothers who are HIV positive, and most of the mothers are drug-abusers who themselves need medical, social and other supportive services.

This results in an estimated 16–22 percent of all HIV positive children in the country being placed in foster care (Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 1989). Returning care to the mother may not be an option, since the mother may be too ill herself to care for the child.

Some reports suggest that the number of drug-exposed children may be increasing (Walker, et al., 1991). Further, some national experts on child welfare data systems believe that reports received from child protective services agencies may represent an "undercount" on the number of drug-exposed infants. (Tatara, 1989–90; Rosenbaum, 1989). The 1990 National Institute on Drug Abuse (NIDA) National Household Survey documents a continuing problem of substance abuse among women of child-bearing age. The survey found that 4.8 million (8 percent) of the 60.1 million women in the childbearing years (15–44) had used an illicit drug in the past month. Slightly over .5 million or .9 percent used cocaine and 3.9 million (6.5 percent) used marijuana in the past month. Among women of all ages, 12.6 percent consumed alcohol once a week or more.

Some pre-natally drug-exposed infants and/or HIV positive infants remain in hospitals beyond the need for in-hospital medical care. Other infants are placed in foster care or leave the hospital with their parent(s) or other relatives but quickly come to the attention of the child protective services agency due to reports of maltreatment. In some other cases, young infants who have gone home with their families return to the hospital at a later date for medical treatment and are abandoned by the family at that time. Frequently, there are young siblings who may be at jeopardy or who are already in out-of-home care.

Some children exposed to drugs, and those who acquire AIDS, pose challenging medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs and to provide respite for the caretakers themselves.

Achieving permanency for such children is typically slow and complex. Some parents may be motivated to keep the child, but not to change their behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The assistance required to address the service needs of the parent may be fragmented among many different agencies. Some services may not be readily available. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

If permanency is to be achieved early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term solutions to provide permanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. A brief description of these programs with the name of a contact person is attached in Appendix IV. Prospective applicants for Priority Areas I and II must, if applicable, include these existing programs in the service network proposed and provide a description of the proposed networking activities.

Emphasis on Coordination

All New Start Service Demonstration Project applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. The consortium may include public health, child welfare, substance abuse treatment and other relevant human services agencies. To the extent possible, applicants are encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers; and community parent education and parent support programs, including in-home visiting, respite care and housing assistance in the community. Plans for coordinating joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the applicant's proposal and supported by documentation.

All currently funded grantees seeking continuation funding should continue to use their existing consortia. These grantees shall:

(1) Describe ways in which the consortium can be expanded, if possible, or changed, if necessary; and

(2) Demonstrate how the consortium has improved communication and working relationships between and among community agencies in coordinating services for this target population.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies

must be explicit and supported by letters of specified commitment to the project. Pro forma support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State and local resources to establish and maintain services beyond the life of the grant.

Part II: Responsibilities of the Grantee

A. Priority Area I—Competing Continuation Service Demonstration Projects

Seventeen service demonstration projects initially funded in FY 1990 under section 101, Public Law 100–505 are eligible for competing continuation grants under this priority area. (See list in appendix III.) Applicants must show progress and accomplishments to date on the original goals and objectives of their current grant.

Proposals submitted under this priority area are to include approaches/strategies to organize, make accessible and implement a comprehensive set of services to:

- Prevent the abandonment of infants and young children, including the provision of services to members of the biological family to address any condition that increases the probability of abandonment of an infant or young child;
- Prevent the subsequent abandonment of infants and young children when they return to their homes;
- Assist abandoned infants and children to reside with their biological families, relatives or foster and adoptive families, as appropriate, and to include the provision of respite care as needed. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that the placements are necessary because a sufficient number of families cannot be recruited and trained to provide foster family care for abandoned infants and young children in the community or that such placements are in the best interests of the child. Proposals including residential care services will be considered only if that component is integral to a larger system of services directed toward achieving permanency for the children. The proposal may not include the costs of construction or other major structural changes for facilities.

Any available summary evaluation data on the program must be included, as well as a descriptive narrative of the data.

Applicants are encouraged to revise or to expand their goals and objectives based on a review of the development and implementation of the program. The review should include an assessment of the effectiveness of the approaches and intervention strategies initially proposed. If revised approaches were used, they should also be assessed for their effectiveness. Competing continuation grantees must include a new service component for support and educational services to grandparents or other family members who are serving as primary caregivers to the children of HIV positive and substance abusing parents. These services can include group support/counseling, information on accessing community resources, financial support, custody issues and issues related to parental visits.

The proposal must include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that the Administration for Children and Families (ACF) encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal. For those applicants who plan to continue the services of their current third party evaluator, the applicant must include in the proposal a sole source justification for review and approval by the program office and the Division of Discretionary Grants, ACF.

The applicant must include an assurance that, at a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant further must assure participation in any evaluation effort supported by ACYF.

Project Duration

The length of the continuation project period for the competing service demonstration grantees may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

The 17 currently funded comprehensive service demonstration grantees initially funded in fiscal year 1990.

Federal Share of Project Costs

Grant amounts will vary and range up to $450,000 for each of three years. The dollar amount requested must be fully justified and documented. The justification can include various community-specific factors related to substance abuse and perinatal exposure to drugs or HIV. For example, the applicant might include information on the rate of illegal drug use by women of child-bearing age; the rate of HIV positive women giving birth; the number of known drug users; the rate or number of infants who have a positive toxicology screen. The size of a prior grant award is not, in and of itself, adequate justification to request the same amount under this announcement.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total cost of the project. Therefore, a project requesting a total of $1,350,000 in Federal funds for all three project years (based on an award of $450,000 per budget year), must include a match of at least $150,000 (10 percent of total project costs, i.e., $50,000 per budget period). The non-Federal matching requirement may be in cash or in-kind contribution.

B. Priority Area II—New Start Comprehensive Service Demonstration Projects

Applicants in jurisdictions in which there currently does not exist a program funded under the Abandoned Infants Assistance Program will be considered under this priority area. Applicants from localities in which projects are currently operating (see appendix III) will not be considered as the purpose of this priority area is to establish comprehensive service projects in new localities.

All proposals submitted under this Priority Area will be considered for funding through September 30, 1993.

Under this priority area proposals will be considered which are designed to organize, make accessible, and implement a comprehensive set of services to:

- Prevent the abandonment in hospitals of infants and young children, including the provision of services to members of the biological family for any

condition that increases the probability of abandonment of an infant or young child;

• Prevent the subsequent abandonment of infants and young children after they have returned home with their parent(s);

• Assist abandoned infants and children to reside with their biological families, relatives or foster and adoptive families, as appropriate, including the use of respite care programs. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that a sufficient number of families cannot be recruited and trained to provide foster care for abandoned infants or young children in the community, or that such placements are in the best interests of the child. Proposals which include residential care services will be considered only if they are integral to a larger system of services working to achieve permanency for these children. These proposals may not include the costs of construction or other major structural changes for facilities.

In order to assure that consideration is given to the widest range of possible interests for program development, applicants must consider the broad range of possible circumstances confronting at-risk parents in the target community, including the following:

• Before pregnancy: educational services on family planning, pre-conception counseling and prenatal care, emphasizing the dangers of substance abuse, and other issues related to the prevention of abandonment;

• During pregnancy: Sensitizing all programs in the community to the importance of recognizing drug abuse during pregnancy and providing voluntary services as often as possible;

• Pregnant women in trouble where drug use is a factor; women who are arrested, victims of domestic violence, or reported to protective services for child maltreatment need special attention;

• Women from high drug use areas seeking prenatal care, or entering a hospital for delivery;

• Parents of infants who must remain in the hospital for any medical reasons related to HIV or possible drug involvement; or

• Families with drug exposed infants and young children in need of support programs.

Some promising strategies which may be considered in formulating proposals include:

• Comprehensive programs with as many services as possible available at one site and located in areas accessible to the client population.

• Assured confidentiality to build client trust and encourage utilization of programs and services.

• Multidisciplinary collaboration to meet variable client needs including treatment, interagency agreements, use of a single case manager and integration of multi-agency case plans.

• Intensive interventions to meet the client's many needs over the long-term including home visits, child care, drop-in centers and 24 hour crisis telephone lines.

• Involvement of fathers in the intervention strategy and treatment approaches, including family counseling.

• Supportive drug treatment services adapted for women, with peer support focusing on common problems and avoiding confrontational group processes commonly used with men.

• Residential treatment and/or drug free housing before and after the birth for women and children to enable them to leave living environments where drugs and alcohol are readily available.

• Parent education and quality child care to support rehabilitation of the parent and the child.

• Respite care for biological, foster and adoptive parents.

Applicants for a comprehensive service project under this priority may include training activities as a part of the project. Applicants should include a service component for support and education services to grandparents or other family members who are serving as primary caregivers to the children of HIV positive parents and drug and alcohol abusing parents. Also, applicants must address resource development and coordination as a goal of the program.

Each service demonstration project must propose to carry out a third-party evaluation as an integral part of the demonstration effort. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that ACF encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal. This evaluation should be designed to collect systematic data to answer questions such as the following: What are the characteristics of families who abandon children? What are the services needs of children/mothers/fathers/families of drug exposed infants? Of HIV positive infants? What are the barriers to comprehensive case management and to the coordination of service delivery? What changes have been most helpful in improving the delivery of services? What changes/improvements have there been in the child's well-being and/or child's development? What changes have there been in the family's stability and ability to function?

The proposal must include an assurance that a key staff member from the project and the third party evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant must agree to participate in any evaluation effort supported by ACYF.

Project Duration

The project period may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

Public and nonprofit private entities.

Federal Share and Project Costs

The maximum Federal share is $450,000 per budget year. However, applicants are strongly encouraged to construct the budget request judiciously. Factors to be considered include the population of the area to be served; the extent of maternal substance abuse in the target area; the number of drug-exposed infants; the number of women with AIDS or women who are HIV positive in the target area; the number of reports/ referrals to social service agencies of babies born with illegal substances in their system. For example, a city which currently receives a $450,000 grant per budget year under this legislation has the following profile: a population of 2–3 million; 20 percent of newborns have been pre-natally exposed to drugs; 2,000 reported allegations of child maltreatment involving infants in substance-abusing families are received annually; approximately 350–375 women with AIDS living in the jurisdiction; an estimated 2,500–3,000 HIV positive women and between 700–800 HIV positive children; and an annual projected number of 500 children born

who are HIV-positive. Each applicant should compare statistics from its area to the example city and develop its budget request accordingly. This profile does not necessarily exclude an application from a jurisdiction of smaller size receiving the maximum Federal amount. However, an applicant from a smaller-sized jurisdiction must provide adequate/justification that the community's experience with drug exposed and/or HIV-positive infants is severe enough to warrant the maximum Federal amount.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total of the project. Therefore, a project requesting a total of $1,350,000 in Federal funds for all three project years (based on an award of $450,000 per budget year), must include a match of at least $150,000 (10 percent of total project costs, i.e., $50,000 per budget year). The non-Federal matching requirement may be in cash or in-kind contribution.

C. Priority Area III—Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children of Substance Abusing and HIV-Positive Women

As an increasing number of HIV-positive and/or drug abusing parents become unable to provide adequate care for their infants and young children, family relatives, usually grandparents, assume responsibility as the primary caregiver for the children. In some jurisdictions, parent support groups report that an estimated 5 percent of families consist of a grandparent raising a grandchild, a circumstance which the support groups report is due primarily to parental drug addiction.

Many of the children born to drug-abusing, HIV positive or AIDS infected women suffer medical or behavioral problems as a result of their mother's addiction or health status. They may be hyperactive and have more severe and chronic health problems and more developmental and neurological delays. These children may be more difficult to parent in many ways that family members, particularly grandparents who are dealing with problems of their own aging, may not be adequately prepared to handle.

In addition to parenting issues, families must also deal with financial support and custody issues. Family members frequently are outside the public child welfare system and receive little, if any, financial assistance. If assistance is available, it is generally at a rate lower than the foster care rates. Many caretakers receive no financial assistance at all.

The caretakers may need education in how to deal with children who have been exposed pre-natally to a dangerous drug or who may be HIV positive; assistance in gaining access to community resources; and, for themselves, support services to cope with the responsibilities of rearing children at an older age. The caregivers need training in what to expect of these children, how to nurture and care for them and how to access other supportive services, including respite care. Family caregivers may also need some education to deal with the addictive behaviors of the parent(s). In addition, if the parent is HIV positive, the caregivers will need support in dealing with the illness and eventual death of the child's parent.

The purpose of this priority area is to provide funds: (1) To existing family caregiver support groups to provide counseling and other support services to family caregivers for drug-exposed and/or HIV positive children; and (2) to establish family caregiver support groups for caregivers of drug-exposed and/or HIV positive children where needed.

Proposals should reflect:

- An understanding of the problems involved in caring for children of drug-using and/or HIV positive parent(s);
- An understanding and a description of the multiple needs of the caregivers;
- Evidence of a commitment to work with a social service, public health or mental health agency in providing needed consultation, support services and advice to family caregivers; and
- A national, broad-based understanding of program and service issues involved in serving families affected by drug abuse and HIV.

Applicants must assure that small sub-grants, which must not exceed $5,000 each, will be awarded to incorporated non-profit, local family caregiver (grandparent) groups or family support groups to conduct family support focused activities.

Applicants must describe the criteria that would be employed in awarding sub-grants to these groups, the methods that would be used to request proposals from the groups and how the subgrantees' activities would be monitored.

The applicants should also include an evaluation plan to be conducted by a third party. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that ACF encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal.

The proposal must include an assurance that a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant must agree to participate in any evaluation effort supported by ACYF.

Project Duration

The project period may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

National private, nonprofit agencies or organizations are eligible to apply. Applicants must demonstrate a national orientation on family caregiver/support activities and be able to demonstrate a history of involvement with grandparent groups or other family member caregiver groups which specifically address the needs of drug-exposed and/or HIV positive children.

Federal Share of Project Costs

The maximum Federal share is $100,000 for each 12 month budget period. It is anticipated that one grant will be awarded under this Priority Area. The applicant must assure, at a minimum, that 75 percent of the awarded Federal funds will be distributed to family support groups.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total cost of the project. For example, a project requesting a total of $300,000 in Federal funds for all three project years (based on an award of $100,000 per budget year), must include a match of at least $33,336 (10 percent of total project costs, i.e., $11,112 per budget year). The non-Federal matching requirement may be in cash or in-kind contribution.

Part III: General Information and Requirements for the Application Process and Review

This part contains general information for applicants and basic requirements for submitting applications in response to this announcement. Application forms are provided at the end of this section along with detailed instructions for developing and assembling the application package for submittal.

A. General Information

1. Review Process and Funding Decisions

Applications will be grouped by priority area and reviewed and scored competitively against the published evaluation criteria (part III, section D) by experts in the field, generally persons from outside the Federal government. The results of this review will be a primary factor in making funding decisions. The Administration for Children and Families (ACF) reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. The ACF may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by the Commissioner, Administration on Children, Youth and Families in making funding decisions.

2. Required Notification of the State Single Point of Contact

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." The CDFA number of the Abandoned Infants Assistance Program is 93.551. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oregon, Pennsylvania, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven areas indicated above need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to advise them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials to the SPOC and indicate the date of the submittal (or the date the SPOC was contacted, if no submittal is required) on the SF 424, item 16a. The SPOCs will be notified of any applicant not indicating SPOC contact on the application, when the SPOC contact is required. The SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due from the SPOC no later than August 20, 1992. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in the grant award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC clearly indicates the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341.F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Attn: William J. McCarron, ACF–92–Abandoned Infants.

A list of Single Points of Contact for each State and Territory is included in appendix I of this announcement.

3. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

B. Deadline for Submittal of Applications

The closing date for receipt of applications is September 21, 1992.

(a) Deadlines. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the address specified above; or (2) sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process under chapter 1–62 of the Department of Health and Human Services' Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier on the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

(b) Applications Submitted by Other Means. Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand-delivered applications will be accepted at the Division of Discretionary Grants during the working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

(c) Late Applications. Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

(d) Extension of Deadlines. The Administration on Children, Youth and Families (ACYF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

c. Application Requirements

1. Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted, as identified at the top of the page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

2. Application Form

The application must be submitted on single-sided reproduced copies of the SF 424 (revised 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, required certifications/assurances, and the program narrative. The full application package is described in part III H.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a of the original SF 424.

5. Length

All narrative sections of the application must meet the formal specifications. Although no page limit has been established, applicants should seriously consider the information provided in the introduction to part II, and provide narratives that are succinct, responsive to the priority area requirements, and within the general recommended length requirements as specified in the instructions later in this part.

6. Evaluation and Reporting Requirements

Section 102(a) of the Act requires the Secretary to provide for evaluations of all projects carried out under section 101. All projects will be required to cooperate in this evaluation, and to provide program data as requested. In addition, all programs must submit quarterly program progress reports and semi-annual fiscal reports as specified in the instructions attached to the Financial Assistance Award.

7. Dissemination

The application must set forth a plan for the dissemination of the results of the project for which assistance is being requested and must agree to cooperate and to provide information for an ACYF-funded special study for the development of a Report on Effective Care Methods as required by section 102(c) of the Act.

8. Statutory Assurances

Each application must include a statement assuring the Department that the grantee will meet the following statutory requirements. Any assistance needed to comply with these requirements should be discussed with the local public child welfare agency.

(1) The following assurances are required under section 101(b) of Public Law 102–236 if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other non-medical residential settings away from the parents:

- That a case plan of the type described in paragraph (1) of section 475 of the Social Security Act will be developed for each infant or young child (to the extent that such infant or young child is not otherwise covered by such a plan) for whom funds would be expended for foster care; and
- That the program includes a case review system of the type described in paragraph five (5) of section 475 of the Social Security Act (covering each such infant and young child who is not otherwise subject to such a system).

Section 475(1). Paragraph (1) of section 475 of the Social Security Act reads substantially as follows "The term—case plan" means a written document which includes at least the following:

a. A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1); and

b. A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and addressing the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

c. Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

Section 475(5). Paragraph five (5) of section 475 of the Social Security Act reads substantially as follows—The term "case review system" means a procedure for assuring that:

a. Each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;

b. The status of each child is reviewed periodically but no less frequently than once every six months either by a court or by administrative review in order to determine the continuing necessity for an appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship; and

c. With respect to such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a Tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

(2) That funds provided under this section shall be used only as specified in the application approved by the Secretary (section 101(d)(1)(A)).

(3) That fiscal control and fund accounting procedures will be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(d)(1)(B)).

(4) That reports to the Secretary will be made annually on the utilization, cost, and outcome of activities conducted, and services furnished under this grant (section 101(d)(1)(C)).

(5) That, if during the majority of the 180-day period preceding the date of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such services (section 101(d)(1)(D)).

(6) That the applicant agrees to cooperate with and provide data to a Federally funded evaluation contractor (section 102(a)).

9. Other Requirements

(1) All cooperating agencies having a role in the activities proposed must submit a letter signed by an official with authority to commit the agency or organization. This letter must specify the activities and level of involvement for the cooperating entity. General letters of support are not acceptable.

(2) Maps indicating areas to be served, locations of services, or other geographic information may be attached.

(3) A table or chart showing the interrelationships and coordination patterns of agencies for the proposed program is required.

(4) All public agencies must certify that the program will not be delayed because of general hiring freezes or restrictions on travel when this relates to hiring, travel or other activities of the funded program. The responsible official signing the application must be able to authorize exemptions from such restriction(s).

D. Evaluation Criteria

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the following criteria.

(1) Objectives and Need for Assistance (25 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Results or Benefits Expected (15 Points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

(3) Approach (40 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule for accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(4) Staff Background and Organization's Experience (20 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between this project and other related work planned, anticipated or underway by the applicant with Federal assistance.

E. The Components of the Application

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424 A, Budget Information: Section A (Budget Summary), Section B (Budget Catagories), and Section E (Budget Estimates of Federal Funds Needed for Balance of Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately two pages);
5. Program Narrative (approximately 50 double-spaced pages is suggested as a reasonable length), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug-Free Workplace; Certification Regarding Lobbying; and
9. Appendices/attachments, may include a bibliography (approximately two pages single-spaced); resume or curriculum vitae (approximately two pages each); and evaluation instruments/measurements.

F. Preparing the Application

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application on the Standard Form 424 (revised April 1988) which is included in the announcement (appendix II).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Completed applications must be sent to: FY 1992 Abandoned Infants Assistance Program, Administration for Children and Families, Division of Discretionary Grants, Hubert H. Humphrey Building, room 341–F.2, 200 Independence Avenue SW., Washington, DC 20201, Attn: William J. McCarron, ACF–92–Abandoned Infants.

The program announcement number (93551–921) must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It

should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be typed on a single-side of 8½" by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are: Objectives and Need for Assistance; Results or Benefits; Approach; and Staff Background.

4. Organizational Capability

Applicants should provide a brief background description of how the applicant is organized and the types and quantities of services it provides. This statement may also include descriptions of relevant past experience as well as the competence of the project team and its demonstrated ability to implement a proposed effort that is comprehensive.

5. Assurance and Certifications

Applicants must file a Standard Form 424B, Assurances—Non-Construction Programs and Certifications Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certification regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug-Free Workplace Requirements and the Debarment and Other Responsibilities certifications.

G. The Application Package

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. To facilitate handling, please do not use covers, binders, or tabs or include extraneous materials such as agency promotion brochures, slides, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of the receipt of, and the four digit identification number assigned to their application. This number and priority area must be referred to in all subsequent communication with ACF concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for ACF staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that ACF staff cannot release predecisional information relative to an application other than that it has been received and that it is going through the review process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

H. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

—— Checklist for a complete application;
—— One original application signed in black ink and dated plus two copies;
—— A complete SPOC certification with the date of SPOC contact entered in item 16 page 1 of the SF 424; and
—— Each package contains the application (original and two copies) for one priority area.

The original and both copies of the application include the following:

—— SF 424, page 1, Application Face Sheet;
—— SF 424A;
—— Budget Justification;
—— Summary description and key words;
—— Program narrative;
—— Organizational Capability Statement;
—— Interagency agreements; letters of commitment;
—— Certification Regarding Lobbying; Debarment Certification;
—— SF 424B Assurances;
—— Section 475 of the Social Security Act (Case Plan) Assurances;
—— Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 93.551: Abandoned Infants Assistance Program)

Dated: June 17, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families, ACF.

Appendix I—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–6172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington, 98504–4151, Telephone (206) 753–4978

West Virginina

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin

Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

BILLING CODE 4130-01-M

Appendix II

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4130-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)—For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amounts(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

One 6j—Show the amount of indirect costs.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4130-01-M

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certificate be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

Appendix III

Locations of Currently Funded Abandoned Infants Assistance Service Programs

	Fiscal years funded
California	
San Joaquin County, Department of Health Care Services, French Camp, CA	1990 & 1991
Orange County Social Services, Santa Ana, CA	1991
Department of Social Services, San Francisco, CA	1990 & 1991
Connecticut	
Yale University, School of Medicine, New Haven, CT	1990 & 1991
Delaware	
Delaware State Department of Services for Children, Youth and Their Families, Wilmington, DE (Project Site is Wilmington)	1991
District of Columbia	
D.C. Department of Human Services, Washington, D.C.	1990 & 1991
Florida	
Florida Department of Health and Rehabilitation Services, Miami, FL (Project Site is Miami)	1990 & 1991
Operation PAR, Inc., St. Petersburg, FL	1990 & 1991
Georgia	
Georgia Department of Human Resources, Atlanta, GA (Project Site is Atlanta)	1990 & 1991
Maryland	
Maryland State Department of Human Resources, Baltimore, MD (Project Site is Baltimore)	1991

	Fiscal years funded
Illinois	
Illinois State Department of Children and Family Services, Springfield, IL (Project Site is Chicago)	1991
Massachusetts	
South Shore Mental Health Center, Boston, MA	1990 & 1991
Massachusetts State Department of Public Health, Boston, MA (Project Sites are New Bedford and Springfield)	1991
Missouri	
Children's Mercy Hospital, Kansas City, MO	1990 & 1991
New Jersey	
Protestant Community Centers, Newark, NJ	1990 & 1992
New Jersey State Department of Human Services, Trenton, NJ (Project Site is Hudson County—Jersey City)	1991
New Mexico	
University of New Mexico, Albuquerque, NM	1990 & 1991
New York	
New York Department of Social Services, Division of Family and Children Services, Albany, NY (Project Site is Brooklyn)	1990 & 1991
Children's Hospital, Buffalo, NY	1991
Leake & Watts Children's Home, Specialized Foster Home Program, Yonkers, NY	1990 & 1991
Pennsylvania	
Hahnemann University, Philadelphia, PA	1990 & 1991
Ken-Crest Centers for Exceptional Children, Philadelphia Children's Services, Philadelphia, PA	1990 & 1991
South Carolina	
Volunteers of America of the Carolinas, Columbia, SC (Project Site is Richland County—Columbia)	1990 & 1991
Tennessee	
Child & Family Services of Knox County, Knoxville, TN	1991
Texas Department of Human Services, Protective Services, Communication Services, and Policy and Customer Relations, Austin, TX (Project Site is Dallas-Fort Worth)	1990 & 1991

Appendix IV

ACYF Discretionary Programs Related to the Abandoned Infants Assistance Act.

• The Child Welfare Research and Demonstration Program provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstration grants supported under this program address services to families to prevent the need for out-of-home placement, the development of alternative placements for children including foster care and adoption, and reunification services so that children can return home, if at all possible. Several projects serving HIV positive children have been funded under this program. For further information, call Cecelia Sudia, (202) 245–0764.

• The Child Welfare Services Training Grant Program provides discretionary grants to accredited public or nonprofit institutions of higher learning to develop and improve educational and training programs related to child welfare and to assist child welfare agencies to improve the skills and qualifications of staff. For further information, call Penny Maza, (202) 245–0172.

• The Adoption Opportunities Program provides financial support to State and local agencies and other profit and nonprofit organizations for research and demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs (including children who are HIV positive or who have been drug-exposed). For further information, call Delmar Weathers, (202) 245–0671.

• Child Abuse and Neglect discretionary activities are designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include conducting research and demonstration grants; gathering, analyzing and disseminating information through a national clearinghouse; and providing grants to eligible State to strengthen child protective services programs. Several projects related to drug exposed babies and substance abusing mothers have been funded under this program and findings are available. For further information, call Joan Gaffney (202) 245–0709.

• The Emergency Child Abuse Prevention Service Projects provide financial support to State and local agencies with experience in providing child maltreatment services to enable such organizations to improve the delivery of services to children whose parents are substance abusers. Projects include the implementation of comprehensive, coordinated, community-based programs which are multi-disciplinary in nature. Other projects include the hiring and training of personnel; the creation or expansion of services to deal with individual and family crises related to substance abuse; and the implementation of public information programs regarding the link between substance abuse and child maltreatment. For further information, call Judy Coulter, (202) 245–0629.

• The Temporary Child Care for Children with Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Many of these projects provide services which will be needed for abandoned infants and these programs, where available, should be included in planning for abandoned infants. For further information, call Ory Cuellar, (202) 245–0899.

• The Administration on Developmental Disabilities (ADD) provides funding for State Planning Councils, Protection and Advocacy Agencies, University Affiliated Programs, and projects of national significance authorized under the Developmental Disabilities Act, 42 U.S.C. 6000, et seq. Networks of research and service delivery systems are supported to promote improvements in the quality, scope and range of services available for those who are developmentally disabled. The ADD has funded pediatric AIDS projects designed to meet the needs of abandoned infants and young children who test HIV positive or who may be placed in foster care because the mother is HIV positive and unable or unwilling to care for the child. The projects focus on identifying children who are at risk; developing early intervention strategies; coordinating services; and providing training. For further information, call Kay Smith (202) 245–2984.

Other DHHS Discretionary Programs Related to Abandoned Infants Assistance Program.

• The Maternal and Child Health Bureau, Health Resource and Services Administration, Public Health Service, provides formula grants, special project grants, and research and training authorized under title V of the Social Security Act, as amended. State grants-in-aid emphasize interagency coordination, early identification of children in need of health services, follow-up care and treatment to reduce the effects of chronic conditions, and prevent handicapping conditions originating at birth. Support is provided for maternal and child health services and crippled children's service, particularly for mothers and children in low-income areas.

The Maternal and Child Health Bureau has funded a variety of Pediatric AIDS Health Care demonstration and special projects as well as training and national leadership activities to promote effective ways to prevent HIV infection, especially through perinatal transmission; to develop community-based, family-centered, coordinated services for infants and children with HIV infection; and to develop programs to reduce the spread of infection to vulnerable populations of children and adolescents. For information concerning projects in your area, call Beth Roy, (301) 443–2350.

• The Office of Substance Abuse Prevention within the Alcohol, Drug Abuse, and Mental Health Administration provides for a variety of activities authorized under the Anti-Drug Abuse Act, Public Law 100–690. Since 1988, model demonstration projects have been funded to promote interagency coordination in the delivery of comprehensive services for substance abusing pregnant and post-partum women and their infants; to increase the availability and accessibility of prevention, early intervention, and treatment services for these populations; to decrease the incidence and prevalence of drug and alcohol use among

pregnant and post-partum women; to improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use; and to reduce the severity of impairment among children born to women involved in substance abuse.

Primary prevention and early intervention projects have also been funded to demonstrate effective comprehensive service systems for the prevention, treatment and rehabilitation of drug and alcohol abuse among high risk youth, many of whom become teenage parents. For information concerning projects in your area, call Ellen Hutchins, (301) 443–5720.

[FR Doc. 92–17067 Filed 7–20–92; 8:45 am]
BILLING CODE 4130–01–M

federal register

Tuesday
July 21, 1992

Part VIII

Resolution Trust Corporation

12 CFR Part 1620

Restrictions on the Sale of Assets by the Resolution Trust Corporation; Final Rule

RESOLUTION TRUST CORPORATION

12 CFR Part 1620

RIN 3205-AA15

Restrictions on the Sale of Assets by the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) is promulgating a regulation pursuant to the requirement of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Thrift and Bank Fraud Act or Act). The statute requires that assets held by the RTC in the course of liquidating federally-insured savings associations not be sold to persons who, in ways specified in the Act, contributed to the demise of such savings associations. The rule is intended to accomplish the Congressional directive by implementing a self-certification process that is a prerequisite to the sale of assets by the RTC. The regulation provides definitions that effectuate and/or clarify the intent of Congress regarding the scope of the statutory prohibitions.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Hu Benton, Legal Division, 202–736–0301; Yeeleng Rothman, Legal Division, 202–736–0340; David Wiley, Asset Management and Sales Division, 202–416–7136. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

The RTC was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to liquidate federally-insured savings associations and the assets of those associations. The RTC's organic statute is the Federal Home Loan Bank Act, as amended, particularly 12 U.S.C. 1441a (FHLB Act). In addition, when acting as conservator or receiver for a savings association, the RTC has the same powers and duties as does the Federal Deposit Insurance Corporation (FDIC) pursuant to sections 11 through 13 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821–1823.

The Thrift and Bank Fraud Act affects asset sales by the RTC in two regards. First, it amended the FDI Act provisions that are applicable to the RTC to proscribe sales by the RTC of assets of particular savings associations to persons who, by committing certain specified felonies, caused a loss to the particular savings associations. On May 10, 1991, the RTC published a directive (Circular 10100.14) that implemented the Thrift and Bank Fraud Act's amendments to the FDI Act regarding RTC asset sales. The directive prescribed a certification that must be made before the RTC will sell an asset. The RTC will modify or supplement that certification through a new directive by the effective date of this regulation.

The second relevant portion of the Thrift and Bank Fraud Act is section 2526(c), which amended the RTC's organic statute, specifically 12 U.S.C. 1441a(f). Section 2526(c) required the RTC to promulgate regulations to prohibit the sale of an asset of a failed savings association to, and/or the use of RTC financing to purchase an asset that is in the hands of the RTC by, persons who, in a non-criminal way, contributed to the demise of that savings association.

On October 9, 1991 (56 FR 50829), the RTC published a proposed regulation to implement the mandates of section 2526(c) of the Thrift and Bank Fraud Act, and provided the opportunity for public comment. Four comments were received.

B. Discussion of Comments

1. Comments Supporting Broadening of Restrictions

One commenter suggested that the proposed regulation was too narrow and that the regulation should be broadened to bar sales of assets of any institution under the RTC's control to a person or entity who caused a loss to, or otherwise harmed, any institution under the RTC's control, not just the specific institution that the prospective asset purchaser harmed. A second commenter supported this recommendation. While acknowledging that the Thrift and Bank Fraud Act did not authorize such a broad ban on prospective purchasers, the commenter encouraged the RTC to seek a legislative amendment to broaden the Act's restrictions. The commenter asserted that the proposed restrictions on sale of assets in connection with loans or extensions of credit, despite tracking the Act, were too lax. For example, the commenter asserted, under the proposed regulation, an individual could receive seller financing from the RTC or an association under its control despite having defrauded that association or having defaulted on an obligation of more than $1 million if the default was non-fraudulent. Furthermore, the proposed rule would assertedly permit an individual who has committed fraud and defaulted on an obligation of more than $1 million to buy an asset for cash. Notwithstanding the limitations of the Thrift and Bank Fraud Act, the commenter asserted that the RTC has broad authority under FIRREA, "inherent in the corporate charter of the RTC," to specify terms and conditions on the sale of assets. The commenter recommended that the RTC "prioritize cash sales," and urged that bids from such individuals "should be scrupulously reviewed and perhaps flagged for GAO audit purposes." Additionally, transactions with anyone who has caused a loss to any RTC institution should be flagged for GAO audit, and the RTC should seek a substantial "premium" to mitigate the damages caused by the purchaser.

As was noted in the preamble to the proposed regulation, the final regulation will closely follow the Thrift and Bank Fraud Act. While there is no question that the RTC has independent authority under FIRREA to establish procedures for the selection of asset purchasers, FIRREA's overriding goals include the attainment of the best possible return on the assets of the associations that the RTC takes over. The commenters have not identified any countervailing legislative or statutory purpose that would be served by placing broadscale handicaps on the offers submitted by prospective purchasers that Congress has not directed the RTC to bar. Accordingly, through this regulation, the RTC does not, except in very limited instances, intend to broaden the Congressionally-imposed limitations on those who can purchase assets from the RTC. Nor will it adopt a preference scheme as proposed by the commenter.

As was stated in the preamble to the proposed regulation, however, this regulation in no way implies that the RTC will provide seller financing to a prospective purchaser who is not creditworthy, and the fact that a prospective purchaser has defaulted on loans of any amount, whether or not any defaults were fraudulent, may lead to a determination that the prospective purchaser is not creditworthy. A section has been added to the regulation to make this clear. Moreover, the RTC is authorized by statute to make loans, and required by statute to obtain the best return on assets under its purview and to make the most efficient use of funds provided to it. The RTC finds that it would be inconsistent with these duties to provide seller financing to any prospective borrower who has exhibited fraud in connection with a default of any amount. Accordingly, while the proposed regulation would arguably have permitted the provision of seller

financing to persons who had committed fraud but caused a loss of less than $1 million, the final regulation has eliminated that possible loophole.

2. Proposed Restrictions; Comments Suggesting Narrowing or Clarification of Specific Restrictions

As prescribed by the Act, the proposed regulation delineated four basic factual situations in which a person will be barred from purchasing an asset of an RTC-controlled savings association, and/or barred from using RTC financing to purchase one or more assets. The following is a brief summary of how the regulation will apply the restrictions in the Act. The final regulation must be consulted for specific restrictions and definitions.

First, if the prospective purchaser, or related entity, as defined in the regulation, has defaulted to any savings association on one or more obligations, and the purchaser or related entity has been found to have engaged in fraud in connection with these obligations, RTC financing would not be provided in any asset sale. Unlike the other regulatory restrictions, this restriction is not limited to the purchase of assets from the specific institution that was harmed by the prospective purchaser. Consistent with the Act, this portion of the regulation would not prohibit a cash sale in this circumstance.

Second, if a person participated in a material way, as defined in the regulation, in one transaction or multiple transactions that resulted in a substantial loss to a savings association, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Third, if a person has, by federal regulatory action, been removed from or barred from participating in the affairs of an association that is under RTC control, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Finally, if a prospective purchaser or related entity has demonstrated a pattern or practice of defalcation, as defined by the regulation, regarding obligations to an RTC controlled association, the prospective purchaser would be barred from purchasing an asset or assets of that association from the RTC, regardless of the intended source of financing or payment.

The Act provides one exception to the above-described restrictions, which is reflected in the regulation. That is, the restrictions would be lifted if in the course of the sale or transfer of an asset, the purchaser's or transferee's obligations to the savings association or to the RTC were resolved or settled. A provision has been added to the regulation to clarify that the inability to make all certifications will not be a bar if the offeror acknowledges the inability to make the necessary certifications but submits a bona fide offer to cure the outstanding obligations.

In addition, as a matter of regulatory authority, the RTC intends to limit the possible retroactive effect of the regulation. That is, no sale or seller financing arrangement would be rescinded or revoked based upon the provisions of the regulation if there was a legally enforceable contract of sale between the purchaser and the RTC at the time the regulation becomes effective.

Pattern or Practice of Defalcation

Two commenters questioned the proposed definition of "pattern or practice of defalcation." One commenter asserted that "defalcation" is commonly defined as encompassing the existence of a fiduciary duty. As such, the commenter suggested that the RTC's proposed standard, which would apply the "pattern or practice of defalcation" restriction to borrowers, would be overbroad. The commenter asserted that the statutory scheme supports restricting only officers or directors based upon a pattern or practice of defalcation. According to the commenter, the Act permits cash sales to defaulting borrowers even if they have engaged in fraud. Therefore, the commenter asserted, the statutory provision that precludes all asset sales to persons who have engaged in defalcation would be meaningless if defalcation applied to borrowers, because defalcation also subsumes fraud. The commenter believes that in the Act and its legislative history, Congress was expressing its displeasure with officers and directors who violated fiduciary duties. Thus, the commenter concluded, blanket restrictions on all sales were intended to apply only to officers and directors.

The commenter also argued that "defalcation" requires a more objective standard emphasizing bad faith and willful misconduct, not merely the fact that the borrower committed more than one default. The commenter also argued that a defalcation exists only where the borrower had the intent to cause a loss at the time the obligation was incurred. According to the commenter, "pattern or practice" should require actions arising out of two or more separate and unrelated transactions or obligations.

The second commenter recommended that the RTC clarify that a pattern or practice of defalcation requires an intent to cause a loss, and that for purposes of the regulation, such intent should be evidenced by a finding of wrongdoing or misconduct.

The RTC disagrees that "pattern or practice of defalcation" should be limited to officers or directors. Congress is not bound to follow common law or colloquial definitions of terms. Moreover, the clearest indication that Congress did not intend to restrict such a bar to officers or directors is in the conflicts of interest provisions of FIRREA, 12 U.S.C. 1441a(p). In that statute, Congress prohibited the RTC from hiring any person as either a contractor or employee if the person had demonstrated a pattern or practice of defalcation. For more than two years, through two regulations published after notice and comment (12 CFR parts 1605 and 1606), the RTC has applied the pattern or practice standard to any person, regardless of whether he or she had been an officer or director of a financial institution. The Thrift and Bank Fraud Act similarly applies to "any person"; moreover, other sections of the Act specifically apply to officers and directors of financial institutions. Therefore, this challenge to the applicability of "pattern or practice of defalcation" is unfounded.

The RTC has determined that the proposed definition of "pattern or practice of defalcation" may well prove to be unworkable and could cause uncertainty that could unduly delay the disposition of assets. Accordingly, the final regulation contains the same definitions that have been used in the RTC's contractor ethics regulation (12 CFR part 1606). As noted above, the RTC has more than two years of applying and interpreting that definition. The RTC has found it to be a workable definition that strikes a fair balance between restricting the activities of persons who intentionally harmed savings associations, while permitting dealings with persons who in good faith are willing to pay debts as financial circumstances permit.

Participating in a Material Way in Causing a Substantial Loss

A commenter asserted that the definition of "material way" is too broad, and should clearly reflect that the acts covered by the rule are relevant only if they occurred in connection with the transactions that caused the loss. In addition, the commenter asserts that the Act requires a finding of the prohibited acts. Mere allegations by a governmental agency should not be enough. Furthermore, the commenter

asserts that the Act requires that there be multiple transactions in order to constitute a restriction on asset purchases. Therefore, the commenter argued that it would be impermissible for the regulations to bar a purchaser for only one covered transaction. Finally, according to the commenter, the definition of "substantial loss" (more than $50,000) fails to consider relevant factors, including whether the loan had an economic basis when it was made, the size of the original transaction, or the reasons for the loss. Assertedly, this standard would be arbitrary and capricious as proposed.

The RTC does not agree with these comments. The clear intent and purpose of the Act is to restrict sales to persons who participated in causing a material loss. The focus is on the degree of harm to savings associations, not on the economic circumstances surrounding particular loans. Furthermore, the Act in this regard does not require a finding of the culpable conduct. Moreover, the RTC does not agree that this bar should be limited to persons who caused a substantial loss through multiple transactions. It would contravene the purposes of the Act, and could possibly be arbitrary and capricious, to bar a purchaser who through multiple transactions had caused a loss of only slightly more than $50,000, but to deal with a person who had through a single transaction caused a loss of substantially greater magnitude (e.g., several million dollars). Accordingly, this section of the proposed regulation will not be changed.

Key Officials

A commenter asserted that the definition of "key official" is too broad in that it would include all officers of a prospective purchaser. The commenter argued that key officials should be limited to those who have "substantial responsibility for the direction and control of the potential purchaser's policies and operations." This would assertedly be consistent with the definition of "management official" in the Contractor Ethics regulations. The commenter asserts that this proposal is supported by strong policy reasons, and that it would be unfair to penalize a purchaser who employs someone who has no significant responsibilities. Assertedly, the proposed definition could make former officers of a failed institution potentially unemployable. Finally, according to the commenter, the proposed definition could unduly restrict the universe of potential purchasers, harming the RTC.

This comment appears to be well-based. The RTC's intent in promulgating the proposed regulation was not to reach down to a person who might nominally be an officer of a company but actually has no significant input in running the company. The legislative purpose of the Act, and the RTC's mandates under FIRREA, are sufficiently served if the scope of officials covered by this regulation is consistent with the RTC's contractor ethics regulation, 12 CFR part 1606. Accordingly, the definition of "key official" has been modified to be consistent with that of "management official" in 12 CFR part 1606.

Application of Restrictions to Affiliates

A commenter asserted that the RTC needs to clarify the extent to which the regulations apply to affiliates. It is proposed that this can be accomplished by incorporating the definition of "control" from the Bank Holding Company Act of 1956, since the Thrift and Bank Fraud Act incorporates that statute's definition of "affiliate," i.e., a company that controls, is controlled by, or is under common control with another company. The RTC finds that this is consistent with the intent of the Thrift and Bank Fraud Act, and the proposed regulation has been modified accordingly.

Applying the above recommended definition of "control," the commenter requested that the RTC clarify that a potential purchaser should not be barred as an affiliate in either of two specific situations. In brief, the situations are: (a) Potential purchaser was managing general partner of a real estate development joint venture with a thrift, where the joint venture innocently defaulted on a loan from the thrift; (b) potential purchaser borrowed money from a thrift in a participating mortgage where the thrift participated in the cash flow and profit, and the purchaser defaulted for economic reasons. The commenter believes that barring such purchasers would preclude hundreds of bidders without a policy reason, as the Act was intended to prevent "insiders" from benefiting from their own wrongdoing. The commenter argued that legally, these situations would not place the purchaser and the institution under common control, and as a policy matter, the purchasers would not be insiders. The commenter concluded that, if guilty of fraud, a felony, or a pattern or practice of defalcation, such purchasers would be barred anyway, so there is no reason to bar them for innocent defaults.

Having incorporated the aforementioned definition of control, the RTC does not wish to provide case-specific guidance through this rulemaking document. However, the RTC will entertain this as a request for a legal opinion should the commenter wish that it be considered as such.

Other Issues

A commenter questioned the statutory authority to prohibit seller financing under the regulations to a person who has been alleged to have committed fraud, absent a finding or final determination by a court or administrative tribunal. The RTC has ample authority under FIRREA, as well as this Act, to place terms and conditions on the provision of loans. See, *e.g.*, 12 U.S.C. 1441a(b)(10)(K), (N). Where, as in this limited situation, it could clearly endanger the taxpayers' recovery on assets under the RTC's control to provide seller financing to a purchaser who has been charged by a governmental body with fraud, the RTC finds it necessary to go beyond the confines of the Thrift and Bank Fraud Act in adopting this regulation.

A commenter recommended clarifying that a prospective purchaser who would be barred from purchasing a single asset is not barred from purchasing a pool containing that asset. No rationale or legal basis was provided. The RTC finds no support for such a limitation.

Finally, a commenter asserted that the RTC should not be permitted to rescind a purchase contract once it is awarded, absent a knowing false certification or material changes in circumstances after filing a certification. The RTC finds that this is not an issue on which Congress gave the RTC regulatory discretion. Rather, the Act clearly prohibits sale of assets to those who have outstanding obligations as defined in the regulations, and the burden is on the person making such certifications to update them as necessary between the time a contract is signed and the transfer of ownership takes place. Intent in filing the certification is not an issue as to whether the sale may be rescinded. The RTC reserves the right to explore all legal remedies at the time an actual situation appears.

C. Conclusion

As noted above, the RTC in promulgating this regulation is following a statute that dictates most of the terms of the regulation. The regulation has been drafted in a way that is intended to be susceptible to self-certification by prospective purchasers. In addition, the RTC has found it necessary to define several terms that are not defined by the Act. In developing these definitions, the RTC has, to the extent that it can do so and remain consistent with the intent of Congress, drawn upon its experience in

the implementation of its Contractor Ethics regulations, 12 CFR part 1606. Where the definitions are strictly prescribed by the Thrift and Bank Fraud Act, the RTC has maintained those definitions. It is the intent of Congress that assets not be sold to persons or entities that they control, or are controlled by, if such persons or entities significantly contributed to the demise of a savings association.

Where neither the Act nor the contractor ethics regulations provided a workable definition, the RTC has attempted to develop a definition or to implement the Act in a way that is consistent with this Congressional intent.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following regulatory flexibility analysis is hereby provided:

1. Reasons, objectives, and legal bases underlying the regulation: These elements have been discussed elsewhere in the Supplementary Information.

2. Small entities to which the regulation would apply: Individuals, and businesses which could qualify as small businesses under various statutory and regulatory standards, may be affected by these provisions. This regulation applies equally to all entities of any size. The RTC has been given no discretion in this matter by Congress.

3. Impact of the regulation on small businesses: Persons or entities that seek to purchase assets from the RTC do so on a strictly voluntary basis. The only burden imposed by this regulation is the completion of a certification form. This will not require the use of professional skills or the preparation of special reports or records. The RTC sought comment on alternative methods of compliance, or reporting requirements; no comments were submitted on this issue.

4. Overlapping or conflicting federal rules: There are no known federal rules which overlap, duplicate, or conflict with the regulation.

5. Alternatives to the regulation. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the regulation. There is no obviously less burdensome method of implementing the statutory mandate than a self-certification process.

Nevertheless, comment was specifically solicited on this issue. No comments were received on this issue.

List of Subjects in 12 CFR Part 1620

Asset disposition, Savings associations.

For the reasons set out in the preamble, the RTC hereby adds part 1620 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1620—RESTRICTIONS ON SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION

Sec.

Authority: 12 U.S.C. 1441a(b)(12) and (f).

§ 1620.1 Purpose and scope.

(a) The Resolution Trust Corporation is prohibited from selling assets that were or are held by savings associations that have been placed under the conservatorship or receivership of the Resolution Trust Corporation to certain persons who profited or engaged in wrongdoing at the expense of those savings associations, or seriously mismanaged those savings associations.

(b) The restrictions of this part generally apply only when there is a connection between a savings association that now holds or formerly held one or more assets, and the prospective purchaser whose conduct injured that specific savings association. The restrictions apply even though the assets are no longer owned by the savings association that the prospective purchaser injured. *Provided*, That, unless the RTC determines otherwise, the restrictions shall not apply to sales of securities backed by pools of assets which may include assets of such savings association. Except as specified, this part does not establish a general prohibition against the sale of assets of savings associations under the control of the Resolution Trust Corporation to a prospective purchaser who may have injured one or more savings associations other than the savings association(s) whose assets the purchaser seeks to purchase.

§ 1620.2 Definitions.

(a) *Corporation* means the Resolution Trust Corporation in its corporate capacity.

(b) *Key official* means a management official, managing or general partner, or director of an entity, or an individual who, acting individually or in concert with one or more entities or individuals, owns or controls 25 percent or more of the ownership of an entity, or otherwise controls the entity's management or policies.

(c) *Management official* means an individual within an organization who has substantial responsibility for the direction and control of the organization's policies and operations.

(d) *Person* includes an individual, or an entity with a legally independent existence, including, without limitation, a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; a society; or other organization or institution.

(e) *RTC* means the Resolution Trust Corporation as corporation, as conservator, or as receiver, as the context indicates.

§ 1620.3 Restrictions on the sale of assets by the RTC in conjunction with a loan or extension of credit.

(a) Neither the Corporation, nor a savings association that is under the conservatorship or receivership of the RTC, may, in selling one or more assets of any savings association that was or is under the conservatorship or receivership of the RTC, provide a loan, advance, or other extension of credit, to a person if—

(1) That person, or a key official of that person, has defaulted, or has been a key official of a partnership or a corporation which defaulted, on one or more obligations to any savings association; and

(2) The person or its key official has been determined by a court or administrative tribunal to have engaged in, or is subject to a pending judicial or administrative action brought by the RTC or a component of the government of the United States or of any state alleging fraudulent activity in connection with any such obligation.

(b) It shall be a violation of paragraph (a) of this section for a person under such circumstances to purchase, using a loan, advance, or other extension of credit provided by the Corporation or such savings association, one or more assets of a subject savings association.

(c) For purposes of paragraph (a) of this section, a person or its key official is considered to have defaulted on an obligation only if the person or its key official has failed to comply with the terms of the loan or other obligation to such an extent that the property

securing the obligation is foreclosed upon. Paragraph (a) of this section does not apply to the failure to satisfy an unsecured obligation.

(d) The restrictions in paragraph (a) of this section do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

§ 1620.4 Restrictions on the sale of assets by the RTC regardless of the method of financing.

(a) Neither the Corporation, nor a savings association that is under its conservatorship or receivership, may sell one or more assets of a savings association that was or is under the conservatorship or receivership of the RTC, to any person if the person or any key official of that person—

(1) Has participated, as an officer or director of the same savings association, or of an affiliate of that savings association, in a material way in one or more transaction(s) that resulted in an aggregate loss of more than $50,000 to that savings association, taking into account any net proceeds from the sale of collateral; or

(2) Has been removed from, or prohibited from participating in the affairs of, the savings association whose asset(s) is (are) being sold, pursuant to any final enforcement action by a Federal banking agency (defined at 12 U.S.C. 1813(q)); or

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to the savings association whose asset(s) is (are) being sold.

(b) The restrictions of paragraphs (a)(1) and (a)(3) of this section shall not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

(c) For purposes of paragraph (a) of this section, "affiliate" is defined as any company that controls, is controlled by, or is under common control with, another company. Control shall be defined as it is defined in 12 U.S.C. 1841(a)(2) on August 20, 1992.

(d) For purposes of paragraph (a) of this section, a "loss" is a net loss where a savings association has written off a receivable, either because it was required to do so by an examiner, auditor or regulator, or elected to write off the receivable using applicable accounting principles.

(e) For purposes of paragraph (a) of this section, an individual or entity has participated in a material way in a transaction that caused a loss to a savings association if the individual or entity:

(1) Has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the RTC or by any component of the government of the United States or of any State—

(i) To have violated any law, regulation, or order issued by a Federal banking agency, or breached or defaulted on a written agreement with a Federal banking agency, or breached a written agreement with a savings association; or

(ii) To have engaged in an unsafe or unsound practice in conducting the affairs of the savings association; or

(iii) To have breached a fiduciary duty owed to that savings association; or

(2) Is in default on a written agreement (including, but not limited to, a contract for goods or services, note, deed of trust, mortgage, loan agreement) with a savings association.

(f) For purposes of paragraph (a) of this section, a person or its key official shall have demonstrated a pattern or practice of defalcation regarding obligations to a savings association if the person or key official has engaged in any or all of the following:

(1) The person or key official has defaulted on more than one obligation to pay principal or interest to the savings association, and the savings association or its successor has continuing legal claims based upon these defaults in an aggregate amount in excess of $50,000; or

(2) The person or key official has engaged in more than one act that was intended to cause a loss to the savings association; or

(3) The person or key official, as a borrower, entered into more than one loan agreement with the savings association, the making of which was an unsafe or unsound action of the association on the basis of facts that the borrower knew or should have known, and the borrower defaulted on the loans in the aggregate amount of $50,000 or more.

(g) For purposes of paragraphs (e) and (f) of this section, the term "default" means a delinquency of 90 or more days as to payment of principal or interest; or the failure to comply with the terms and conditions of a contract or other written agreement, other than a loan or advance.

(h) It shall be a violation of this part for any person to purchase an asset that the RTC or a savings association under its conservatorship or receivership is prohibited from selling to that person if circumstances exist that would cause any of the restrictions enumerated in paragraph (a) of this section to apply.

§ 1620.5 Independent determination of eligibility for seller financing.

The ability of an offeror to certify that none of the restrictions set forth in this part is applicable, does not create any right to obtain a loan or advance by or through the RTC or a savings association under its conservatorship or receivership, or remove the right of the RTC to make an independent determination, based upon all relevant facts of the offeror's financial condition and history, of the offeror's eligibility to receive such loan or advance.

§ 1620.6 Certain asset sales unaffected by this part.

The effectiveness of this part shall not be grounds for rescission or revocation of the sale of one or more assets, or the withholding of seller financing by the RTC, if a legally enforceable contract of sale and/or agreement for seller financing was in effect prior to August 20, 1992.

§ 1620.7 Certification required.

The Corporation, or a savings association under its conservatorship or receivership, may not sell any asset, and no person shall buy any asset from the RTC or a savings association under its conservatorship or receivership, unless the person shall have certified, under penalty of perjury, with notice that a false certification may lead to punishment under 18 U.S.C. 1001 and 18 U.S.C. 1621, that none of the above restrictions applies to the sale of that asset. *Provided* That, the RTC may in its discretion permit a person to make an offer to purchase one or more assets, and may accept such offer, despite the inability to so certify, if the person acknowledges the inability to certify and submits a bona fide offer to cure any existing amounts owed to the RTC or the relevant association in conjunction with the sale of the asset(s).

By order of the Chief Executive Officer.

Dated at Washington, DC, this 10th day of July 1992.

Resolution Trust Corporation.

William Tricarico,

Assistant Secretary.

[FR Doc. 92-16682 Filed 7-20-92; 12:01 pm]

BILLING CODE 6714-01-M

federal register

Tuesday
July 21, 1992

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 219

Flexible Subsidy Program—Capital Improvement Loans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 219

[Docket No. R-92-1437; FR-2541-F-02]

RIN 2502-AE55

Flexible Subsidy Program—Capital Improvement Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule published on March 7, 1989 (54 FR 9708), that amended the regulations at 24 CFR part 219, which govern the HUD Flexible Subsidy Program. Under the Flexible Subsidy Program, HUD provides assistance to projects experiencing extreme financial difficulty. The interim rule revised part 219 to reflect recent legislative amendments to the Flexible Subsidy Program, and to organize the Flexible Subsidy regulations into three subparts to cover: The current program of Flexible Subsidy operating assistance; the new program of capital improvement loans; and the general provisions applicable to both types of assistance. This rule makes final those amendments, with certain additions and revisions.

With respect to additions, the final rule implements those provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and of the Department of Housing and Urban Development Reform Act of 1989, that are applicable to the Flexible Subsidy Program. With respect to revisions, the final rule revises certain sections of the interim rule to reflect policies and practices that are part of the Flexible Subsidy Program, and that should have been incorporated in the interim rule.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3944 or (202) 708-4594 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved and assigned OMB control number 2502-0395.

II. Background

The 1978 Amendments

Section 201 of the Housing and Community Development Amendments of 1978 (section 201) created the Flexible Subsidy Program to provide operating assistance for projects experiencing extreme financial difficulty. The Flexible Subsidy Program was created in response to the findings and recommendations of a HUD 1977/1978 Task Force on Multifamily Property Utilization (44 FR 29632). The Task Force concluded that then-existing subsidies and loan servicing tools did not adequately address the full range of problems confronting multifamily projects. Under HUD programs then in existence, the amount of subsidy was determined by factors other than total project needs (e.g., by tenant rent/income ratios in the Section 8 Program).

The Flexible Subsidy Program, as created by section 201, provided that the amount of assistance is to be based upon an analysis of the project's total needs. Operating assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects so as to maintain their low- and moderate-income character. Assistance can be used to fund operating deficits, such as delinquent tax escrows or inadequate reserve accounts, and to correct past deficiencies in maintenance, repairs, and capital replacements.

The 1983 Amendments

The 1983 amendments to section 201 (made by section 217 of the Housing and Urban-Rural Recovery Act of 1983) expanded the Flexible Subsidy Program to include projects assisted under section 8 of the United States Housing Act of 1937 (section 8) that had been converted from assistance under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement). The 1983 amendments also clarified that a project need not have an FHA-insured mortgage to be eligible for assistance under the Flexible Subsidy Program.

The 1987 Amendments

The 1987 amendments to section 201 (amendments made by sections 185 and 186 of the Housing and Community Development Act of 1987) again expanded the category of eligible projects. Projects assisted under section 23 of the United States Housing Act of 1937 (section 23) as it existed before January 1, 1975, and projects that received a loan under section 202 of the Housing Act of 1959 (section 202) more than 15 years before the date on which assistance is to be made available under this program, were made eligible.

The 1987 amendments also created a new category of assistance to be provided under the Flexible Subsidy Program—assistance for projects that need capital improvements to achieve physical soundness, and cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future. This program of capital improvement loans is to be funded at an annual minimum of $30 million or 40 percent of the total amount available to the Flexible Subsidy Program (whichever is less), to the extent of approvable applications.

The 1987 amendments contemplate a contribution from the project owner toward the capital improvements of at least 20 percent of the total estimated cost. HUD may require the contribution to be as much as 30 percent of the cost, if that action is necessary to keep the rent burden required to service the loan at a reasonable level. The cost for capital improvements to be made under this loan program is limited to the amount HUD determines to be necessary to repair or replace capital items that have failed, or are likely to fail, in the near future; to improve those items and associated items to meet HUD's cost-effective energy efficiency standards; and to satisfy requirements under section 504 of the Rehabilitation Act of 1973 for access by mobility-impaired persons.

The 1987 amendments specify priorities to be given in awarding capital improvement loans. Top priority is given to projects where the owner is seeking to prepay the mortgage, and the project is eligible for incentives to continue operating for the benefit of low- and moderate-income tenants under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, or under title VI, subtitle A of the Cranston-Gonzalez National Affordable Housing Act. Other projects are to be given priority to the extent (1) the

capital improvements are immediately required; (2) the project serves lower income families and other suitable housing is unavailable in the area; (3) the capital improvements involve life, safety, or health of the project residents; and (4) the project demonstrates the greatest financial distress but can be rendered physically sound. In any case, the owner must agree to maintain the low- and moderate-income character of the project at least until the maturity of the original mortgage.

The 1987 amendments also specify that the interest rate on the loan is to be established by the Secretary of HUD. It is to be a rate that is not less than 3 percent nor more than 6 percent (unless a rate of as low as 1 percent is needed to sustain acceptable rents), and it is to be based on a point spread below the Treasury rate, plus an allowance established by the Secretary to cover administrative costs and probable losses. The term of the loan may not exceed the remaining term of the original mortgage. The Secretary is also authorized to impose additional conditions determined to be appropriate.

Recognizing that a project may need considerable assistance, the 1987 amendments provide that a project may receive more than one loan or other assistance under the Flexible Subsidy Program. Those amendments also provide that if the debt service on a capital improvement loan would otherwise force the rents too high, the owner's contribution can be required to be higher or the rate of interest on the loan can be lower, as discussed above. Other ways stated in the statute to resolve the high rent burden problem are to provide Section 8 existing housing assistance or to increase the length of the loan term.

III. The Interim Rule

Section 1011 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (McKinney Act) required HUD to implement the capital improvement loan component of the program, at a stated minimum annual funding level, by issuing "regulations" that become effective not later than February 5, 1989. On March 7, 1989 (54 FR 9708), HUD published an interim rule to implement the capital improvement loan component of the Flexible Subsidy Program, as required by section 1011 of the McKinney Act, and to implement other changes to the program made by the 1983 and 1987 amendments.

The interim rule reorganized 24 CFR part 219 into three subparts. Subpart A contains the regulatory provisions that are applicable to the entire Flexible Subsidy Program. Subpart B contains the regulations that are applicable only to the existing Operating Assistance Program, and subpart C contains the requirements that are applicable only to the Capital Improvement Loan Program. The preamble to the March 7, 1989 rule described more fully additional changes made to the then-existing part 219 regulations, and the reasons for the revisions. (See 54 9709-9812.)

HUD invited public comment on the March 7, 1989 rule, and advised that the comments would be considered in the development of a final rule (54 FR 9712). The comments and HUD's responses to the comments are discussed below. Since publication of the interim rule, additional statutory requirements have been made applicable to the Flexible Subsidy Program. These requirements have been incorporated in the final rule. A discussion of these statutory requirements and the reasons for incorporation in the final rule is set forth below. In addition to new statutory requirements, the final rule makes revisions to certain sections of the interim rule to reflect policies and practices that are part of the Flexible Subsidy Program, and which should have been incorporated in the interim rule.

IV. Additions to Interim Rule

The 1989 HUD Reform Act

The Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act) contains an array of new authorities designed to assist HUD in reshaping the administration of its programs. On March 14, 1991, HUD published in the **Federal Register** a final rule to implement section 102 of the Reform Act of 1989. (See 24 CFR part 12, 56 FR 11032.) The March 14, 1991 rule made final a proposed rule published on June 19, 1990 (55 FR 25036). Section 102 of the Reform Act contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD.

Under subpart C of the March 14, 1991 rule, applicants that seek assistance under certain HUD programs are required to make the disclosures set forth in 24 CFR 12.32. These disclosures include information on other government assistance to be used with respect to the project or activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put. Subpart D of the March 14, 1991, rule requires that before making any assistance which is subject to the provisions of subpart D available with respect to any housing project for which other government assistance is or is expected to be made available, HUD will determine and execute a certification that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance.

The Flexible Subsidy Program was listed as a HUD program covered by the requirements of subpart C and subpart D in the June 19, 1990 proposed rule and March 14, 1991 final rule pertaining to the Reform Act. (See 55 FR 25046, 25048, 25050; 56 FR 11044, 11045, 11048.) Accordingly, the Department is incorporating in §§ 219.210 and 219.310 of this final rule (the sections which list the application submission requirements for a Flexible Subsidy loan) the disclosures required by subpart C of the Department's Reform Act regulations. Sections 291.205 and 219.315 incorporate the requirements of subpart D.

Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655) (Uniform Relocation Act), as amended by the Uniform Relocation Act Amendments of 1987 (URA Amendments), authorizes Federal financial assistance to persons displaced from real property as a direct result of acquisition by a Federal agency, a State or a State agency for a Federal or federally assisted project or program, or by rehabilitation, demolition, or privately undertaken acquisition for Federal or federally assisted programs. Sections 412 of the URA Amendments designated the Department of Transportation (DOT) to be the lead Federal agency and authorized DOT to issue, with the active participation of other Federal agencies, regulations to implement the URA Amendments. On March 2, 1989, DOT issued a government-wide final rule (49 CFR part 24; 54 FR 8912) that followed an interim rule issued by that agency on December 17, 1987 (52 FR 47994). On February 19, 1988 (53 FR 4964), HUD published an interim rule advising that it would make effective, as of April 2, 1989, "all rule changes necessary to implement amendments to the Uniform Relocation Act."

The Flexible Subsidy Program is subject to the requirements of the Uniform Relocation Act. Activities that involve displacement of individuals are not eligible for funding under the Flexible Subsidy Program. However, in

the event permanent displacement occurs under the program, the provisions of the Uniform Relocation Act apply. Further, temporary relocation is subject to certain specified program requirements. Accordingly, this final rule adds a new section 135 to part 219 to incorporate the requirements of the amended URA as applicable to the Flexible Subsidy Program, and to incorporate the administrative requirements governing temporary relocation. The inclusion of this new section 135 in this final rule is necessary to conform the Flexible Subsidy Program regulations to the requirements of the Uniform Relocation Act. The requirements of the amended Uniform Relocation Act are explicit and allow little, if any, administrative discretion or interpretation.

Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing—April 8, 1992 Interim Rule

On April 8, 1992 (57 FR 11992), HUD published an interim rule, entitled "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing." The interim rule implements and makes effective HUD's procedures and standards for administering subtitle A of title VI of the National Affordable Housing Act, entitled "Low Income Housing Preservation and Resident Homeownership Act of 1990," which repeals and replaces the Emergency Low Income Housing Preservation Act of 1987. The April 8, 1992 interim rule, which is based on a May 2, 1991 proposed rule (56 FR 20262), incorporate the public comments received on the proposed rule, and solicits additional public comments. One of the sections amended by the April 8, 1992 interim rule was § 219.325, entitled "Effect on Rental Rates." The April 8, 1992 interim rule made changes to the introductory text of paragraph (b) and to paragraph (b)(3) of this section, and added a new paragraph (b)(5). This final rule incorporates the amendments made to § 219.325 by the April 8, 1992 interim rule. However, the Department notes that further changes may be made to this section when a final rule is issued on the matter of Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing."

V. Revisions to Interim Rule

Three Year Limit on Assistance Applicable to Entire Program (§ 219.105(e))

As noted earlier in this preamble, section 201 of the Housing and Community Development Amendments of 1978 established the operating assistance component of the Flexible Subsidy Program. Section 201(c)(1)(C) of this statute states in par that "* * * with respect to projects sold after October 1, 1978, *assistance* shall be available for a period not to exceed three years * * *". (Emphasis added.) Although there have been subsequent amendments to section 201, as discussed above (e.g., the creation of the capital improvements portion of the Flexible Subsidy Program in 1987), section 201(c)(1)(C) has not changed. Further, in amending section 201 to create the capital improvement component of the program, the Congress did not create a separate eligibility section for capital improvement loans, but rather, left section 201(c) to govern eligibility for both operating assistance and capital improvement loans. Thus, the Department concludes that the word "assistance" as used in section 201(c)(1)(C) is intended to cover both operating assistance and capital improvements. The interim rule, however, failed to accurately reflect the language of section 201(c)(1)(C) of the 1978 Amendments.

Subpart A of the rule sets forth the requirements applicable to the entire Flexible Subsidy Program—both operating assistance and capital improvement loans. Section 219.105(e) of subpart A, provides, among other things, that for projects sold after October 1, 1978, operating assistance under subpart B shall be available for a period not to exceed three years. (Emphasis added.) No mention was made of capital improvement loans in this section. Accordingly, this final rule amends § 219.105(e) to clarify that the three-year limitation is applicable to operating assistance and capital improvement loans, in accordance with the language of section 201(c)(1)(C).

When Owner Contribution to Project as Condition for Approval of TPA May Constitute Required Owner Cash Contribution (§§ 219.205(b)(1), 219.305(c))

As set forth in the March 7, 1989 interim rule, § 219.205(b)(1) (governing operating assistance loans) and § 219.205(c) (governing capital assistance loans) provide that funds which have already been agreed to be contributed to a project as a condition for purchase of the project (the transfer of physical assets (TPA)) will not be considered as the owner's cash contribution that is required for approval of a loan under the Flexible Subsidy Program. In response to public comment on this issue, discussed in Section VI of this preamble, these two sections have been revised by this final rule to include an exception to this restriction.

As revised, §§ 219.205(b)(1) and 219.305(c) now provide, in paragraphs (b)(1)(ii) and (c)(3), respectively, that cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not normally be considered for purposes of meeting the cash contribution requirement unless a finding is made that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA. However, the TPA must have received preliminary approval not later than 36 months prior to the flexible subsidy loan application for this contribution to be considered the owner's matching cash contribution.

Inclusion of Insured Projects in Estimated Project Revenue (§ 219.215)

Section 219.215 sets forth the procedures for computing estimated project revenue. Section 219.215(a)(1)(ii) provides that a vacancy allowance may be used in developing the estimated revenue. Prior to publication of the March 7, 1989 interim rule, § 219.125 contained the provisions governing estimation of project revenue. Section 219.125 provided that a vacancy allowance may be used in developing the estimated revenue for insured projects. One of the revisions made to this section (now § 219.215) by the March 7, 1989 interim rule was to add non-insured projects to the category of projects covered by this section. However, in adding "non-insured" projects, reference to "insured projects" was inadvertently omitted. Accordingly, this final rule re-incorporates reference to "insured" projects in this section.

Repayment of Operating Assistance Triggered by TPA (§ 219.220(b))

Section 219.220(b) of the interim rule provided that assistance paid to an owner under the operating assistance component of the Flexible Subsidy Program must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, or prepayment of the mortgage. Section 219.220(b) of the final rule has been revised to include an additional event which may trigger repayment—"a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA." The inclusion of this event in § 219.220(b) does not introduce a new repayment requirement. HUD Notice H–84–37, first issued November 11, 1984, and periodically

extended subsequent to that date, provides for repayment of the Flexible Subsidy assistance generally at the time of a transfer of physical assets. Accordingly the inclusion of this provision in § 219.220(b) reflects an existing Flexible Subsidy Program practice.

Removal of Limitation on Capital Improvement Loan (§ 219.315)

Section 219.315 of the interim rule contained a paragraph that limited the amount of assistance available for a capital improvement loan. This section provided that if the requested capital improvement loan is greater than the remaining balance of the mortgage, the loan will not exceed 80 percent of the appraised value of the property as repaired, less the balance of the first mortgage. The Department has eliminated this limitation in the final rule. This limitation is not required by statute, and in practice, the amounts of assistance requested were below the 80 percent cap established by this section.

VI. Discussion of Public Comments on Interim Rule

Five entities submitted comments on the interim rule. The commenters included a public housing agency; three professional associations, representing the building, housing and redevelopment, and real estate management industries; and a law firm. The commenters generally were supportive of the interim rule, but offered several suggestions for changes, principally with respect to owner contributions, priorities for funding, and the level of funding. Several comments addressed portions of part 219 that were not changed or were not materially changed by the interim rule from the former provisions of part 219. The purpose of inviting public comments on the March 7, 1989 interim rule was to obtain comments on those sections of part 219 that were amended by the interim rule. In the event the Department decides to make substantive revisions to those provisions of part 219 that were not amended by the interim rule, the Department will publish a proposed rule which describes the amendments and invites public comment.

Following careful consideration of the comments on the interim rule, the Department has decided to adopt the March 7, 1989 interim rule with only those changes discussed in sections IV and V of the preamble.

The following presents a discussion of the substantive issues raised by the commenters, and the Department's response to each issue.

Expansion of Eligible Projects (§ 219.105)

Section 219.105, which specifies types of eligible projects under the Flexible Subsidy Program, was revised in the interim rule to reflect the addition of several categories of new projects, including certain section 8 projects, certain section 23 (precursor to section 8) projects, and certain section 202 projects.

Comment. One commenter stated that it was concerned about the inclusion of the section 8, section 23 and section 202 projects as eligible projects under the Flexible Subsidy Program, because the inclusion of these projects would increase competition for State agency non-insured projects.

Response. As discussed earlier in this preamble, the Congress expanded the category of projects eligible for assistance under the Flexible Subsidy Program to include section 8, section 23 and section 202 projects. The allocation process under the Flexible Subsidy Program establishes two categories of projects: (1) State agency financed non-insured projects; and (2) all other projects, including projects with FHA-insured and HUD-held mortgages. Accordingly, a State agency non-insured project will not compete against a section 8, section 23 or section 202 project for funding.

Comment. The same commenter stated that it was important that the final Flexible Subsidy rule not impair or foreclose funding for non-insured section 236 projects (section 236 refers to section 236 of the National Housing Act). The commenter stated that it is inequitable to take funds generated from excess income on section 236 projects (many of which are non-insured) and allocate these funds to a new larger group of federally-assisted projects at the expense of the non-insured section 236 projects.

Response. When section 236 interest reduction assistance was originally made available, the specifications were clearly spelled out, including the return of any excess income to HUD with no controls on its reuse. It is true that some projects have generated large amounts of excess income over the years, and have used little or no excess income, while the reverse is true for others—resulting in Project A subsidizing Project B. However, on an overall basis, this is considered an effective use of funds to help maintain the low- and moderate-income housing stock. HUD's experience to date indicates that the largest percent of dollars paid into the Flexible Subsidy Fund comes from section 236 projects with mortgages insured or held by HUD.

Comment. Finally, the commenter stated that the final rule should assure that State-agency non-insured projects will receive equal treatment with HUD-insured projects when funds are allocated.

Response. As noted above, the allocation process under the Flexible Subsidy Program establishes two categories of projects: (1) State agency financed non-insured projects; and (2) all others, including projects with FHA-insured and HUD-held mortgages. The allocations are the same in each category: the number of units in potentially eligible projects of the category as a percentage of the total number of units in all potentially eligible projects.

Use of Uncommitted Capital Improvement Loan Amounts (§ 219.115(e))

Section 219.115(e) provides in relevant part that if any of the amounts reserved for capital improvement loans remain unused 60 days before the end of a fiscal year, these amounts will become available for operating assistance loans under subpart B.

Comment. One commenter stated that it was unclear whether the unused funds must be reserved for specific projects before the end of the fiscal year or will be carried over to the next fiscal year. The commenter stated that in the former case, 60 days would not be sufficient time for owners to apply for operating assistance loans, and for HUD to review the applications. The commenter requested that in the final regulation HUD explain more clearly how these unused funds will be treated.

Response. At the time of issuance of the interim rule, HUD anticipated that a Notice of Fund Availability (NOFA) would be issued for both subpart B, operating assistance loans, and subpart C, capital improvement loans, during the second quarter of Fiscal Year 1991. Issuance of the NOFA by this quarter would permit Field Offices and Headquarters to review all applications and make any required funding transfers before the end of the fiscal year. (The FY 1991 NOFA for both operating assistance loans and capital improvement loans was published on May 7, 1991 (56 FR 21200.)) HUD expects to publish future NOFAs (which announce funding for both operating assistance and capital improvement loans) early in the fiscal year. (The FY 1992 NOFA was published on February 18, 1992 (57 FR 5948).) HUD believes that 60 days is sufficient time to review applications under a process in which NOFAs that announce funding for both

components of the Flexible Subsidy Program are published early in the fiscal year. If any of the amounts set aside for capital improvement loans remain unreserved 60 days before the end of a fiscal year, they will become available for operating assistance under subpart B. Additionally, under this process, owners who applied for operating assistance in response to the published NOFA, are not required to reapply if additional operating assistance becomes available.

Local Government Consultation (§ 219.120)

This section provides that the Secretary of HUD, before making assistance available to a project under the Flexible Subsidy Program, will consult with the appropriate officials of the unit of local government in which the project is located to seek certain assurances about the project; i.e., that the community in which the project is located is providing, or will provide, essential services to the project; the real estate taxes on the project are, or will be, no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures; and any Flexible Subsidy assistance provided to the project would not be inconsistent with local plans and priorities.

Comment. One commenter questioned which local officials would make the determinations necessary to give the assurance required by § 219.120. The commenter stated that the regulations need to clarify how this process will work.

Response. This portion of the rule has not changed since May 23, 1980. Accordingly, HUD has had ample experience in determining which officials in local government to contact.

Amount of Operating Assistance (§ 219.205(a))

Section 219. 335(b) provides in part that the principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds.

Comment. One commenter suggested that a provision similar to § 219.335(b) be included in the regulations governing operating assistance.

Response. A provision similar to § 219.335(b) was included in the published interim rule. Section 219.205(a) provides, "The Secretary will provide initial *and subsequent* operating assistance to permit the project * * *." (Emphasis added.)

Program Eligibility of Repair or Replacement Item (§ 219.205(a)(1))

Section 219.205(a)(1) provides that a repair or replacement item is eligible for assistance under the Flexible Subsidy Program only if no previous payment of HUD-related assistance (such as assistance under the Flexible Subsidy Program or CDBG Program) has been made.

Comment. One commenter requested that a repair or replacement item be eligible for assistance under the Flexible Subsidy Program even if previous assistance was made available to this item. The commenter stated that there may be a particular item which requires periodic attention, and, consequently, periodic assistance.

Response. A repair or replacement item is only eligible under subpart B of the Flexible Subsidy (Operating Assistance), if no previous payment of HUD-related assistance has been made. This is a statutory constraint. A repair or replacement item for which assistance previously has been provided by HUD might be eligible for Flexible Subsidy loan under subpart C (Capital Improvement Loans) where this constraint does not exist. However, it is not the intent of this program to provide a series of capital improvement loans for periodic or recurring maintenance problems. Items which are known to have recurring problems should be included in a project's budget. Additionally, it is not the intent of the Capital Improvement Loan Program (CILP) to provide a second capital improvement loan to remedy a repair which was made with one CILP loan, and where that repair was not adequately effected.

Owner Contribution Credit for Cash Already to Contribute to Project (§§ 219.205(b)(1), 219.305(c))

As discussed above in section V of this preamble, §§ 219.205(b)(1) and 219.305(c), as set forth in the March 7, 1989 interim rule, provide that funds which have already been agreed to be contributed to a project as a condition for approval of the TPA will not be considered as the owner's cash contribution that is required for approval of a loan under the Flexible Subsidy Program. As set forth in the March 7, 1989 interim rule, each of these sections also provide that HUD will consider as credit toward the owner's contribution any cash contribution, made from sources other than project income, that was made within 24 months before applying for the loan.

Comment. Two commenters questioned why TPA contributions could not be credited toward the owner contribution or Flexible Subsidy Program loans. One commenter stated that the TPA funds may be the only source of funds available to the owner. The other commenter stated that TPA funds should receive credit as the required owner contribution if these funds have been contributed by the owner for the purpose of making, or are related to making, physical repairs to a project within two years before the TPA application or operating assistance application, or if funds are being, or will be, contributed as a condition of HUD's approval of a TPA, or an operating assistance loan.

Response. For the reasons discussed in the response to the following comment, the Department does not agree that TPA contributions should be credited toward the owner's required contribution for Flexible Subsidy Program loans in every case. However, as discussed in section V of this preamble, the Department has determined that TPA funds should receive credit as the required owner contribution in the following situation. Cash that already has been contributed to the project as a condition for approval of the TPA will be considered the required owner cash contribution if HUD has made a finding that the additional work and cost required for the project was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA. However, to be considered the cash contribution under this circumstance, the TPA must have received preliminary approval not later that 36 months prior to the loan application. Accordingly, §§ 219.205(b)(1) and 219.305(c) have been revised to include this provision.

Comment. One commenter objected to the time limit placed on the owner contributions which would receive credit under §§ 219.205(b) and 219.305(c). The commenter suggested that these contributions always be considered, with no time limitations.

Response. A 24-month time frame is considered reasonable for purposes of measuring previous owner contributions. To consider all owner contributions, regardless of the time made, would be to consider, in many cases, owner contributions made 20 years ago. The problem an extended time period presents is one of adequate documentation of the owner contribution. Generally, the financial records concerning an owner contribution made many years ago no longer exists. Additionally, the purposes of past contributions become obscure (i.e., were they made as a trade-off to

obtain other benefits from HUD, such as additional Section 8 funds?). Accordingly, HUD considers the 24-month time limitation to be an appropriate standard.

Payment of Operating Assistance Loan (§ 219.220(a))

Section 219.220(a) provides that operating assistance payments will be paid to the project owner after monies payable from the Reserve Fund for Replacements and owner contribution have been paid.

Comment. One commenter stated that these conditions for disbursement of the operating assistance loan proceeds do not permit the owner to make the owner's contribution over a period of time. The commenter also stated that the Replacement Reserve Fund should be maintained to keep the project in good condition for the future.

Response. Current administrative guidelines and the Financial Assistance Contract (Form HUD–9819) specify that owner contributions be deposited on the first working day of each quarter for Flexible Subsidy Assistance under subpart B (Operating Assistance). Drawdowns, if any, from the Reserve Fund for Replacements are negotiated between project owners and HUD. It is not HUD's intent to deplete the Reserve Fund as a whole; one of the eligible purposes of Operating Assistance is to increase the amount on hand in the Reserve Fund, where necessary.

Priorities for Funding (§ 219.230)

Section 219.230 states that HUD will give funding priority for operating assistance to projects currently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under subpart B (the operating assistance regulations). This section further provides that to the extent that funds remain available, assistance may be provided to projects that on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the next five years and satisfy the eligibility requirements of the Flexible Subsidy Program.

Comment. One commenter recommended that the final rule specify several criteria for determining the two types of financial and management problems identified in § 219.230.

Response. The criteria for determining financial and management problems are well known, and have been implemented by HUD for many years. HUD's concern with codification of the criteria is that it would tend to overemphasize some of the criteria, to the possible exclusion of others which may be equally important in a specific case. Additionally, codification of the criteria may constrain the flexibility that should prevail in an overall analysis of a particular project's financial and management problems.

Comment. The same commenter recommended use of performance standards developed by the commenter for its own management evaluation and improvement system, or the performance standards developed by the Public Housing Decontrol Initiative.

Response. Both systems recommended by the commenter are excellent; however, the Department has long-established systems in place to deal with the projects eligible for the Flexible Subsidy Program. These systems are being further enhanced through the new Comprehensive Servicing Policy which is currently being implemented.

Owner Contribution in the Capital Improvement Loan Program (§ 219.305(c))

Section 219.305(c) of subpart C, which contains the regulations governing capital improvement loans, provides that an owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from the cash contribution requirement. Paragraph (1) of this section provides that the contribution must be made in cash.

1. Reduce Amount of Required Owner Contribution

Comment. Three commenters expressed concern about the required cash contribution in the Capital Improvement Loan Program. Two commenters stated that recent changes in the Federal tax laws made it increasingly difficult to raise owner capital as a 'down payment' or matching contribution for the capital improvement loan. One commenter recommended that the owner contribution level should not exceed 20 percent of the total estimated cost of capital improvements. Another commenter suggested that HUD take a more flexible approach to the required owner contribution. This commenter suggested that HUD establish an owner contribution range, as for example 20 to 30 percent of total project costs, and that the precise percentage for an owner would be determined based on the economics of each individual project.

Response. Historically, the Flexible Subsidy Program has required up to a one-third contribution from a limited dividend owner. In the case of the Capital Improvement Loan Program, Section 201, as amended by section 185(f) of the Housing and Community Development Act of 1987, requires a minimum contribution of 20 percent, and authorizes the Secretary to increase the required owner contribution to an amount not to exceed 30 percent. Given the history of requiring up to one-third contributions in the operating assistance component of the program, the Department determined that the usual amount of owner contribution in the capital improvement loan component of the program should be higher than the minimum level of 20 percent; therefore, the intermediate rate of 25 percent was selected. However, Section 201 permits the owner's contribution to be waived or reduced, should sufficient justification exist to do so. Also, HUD will attempt to tailor each loan to the condition of the property and the ability of the rent structure to support the debt service necessary to amortize the loan. This will provide a sufficient basis for reducing the owner's contribution, if circumstances warrant.

2. Permit Non-Cash Owner Contributions

Comment. One commenter noted that for non-HUD-insured projects, the regulations permit non-cash owner contributions for operating assistance loans, but not for capital improvement loans. The commenter requested that non-cash contributions be permitted for both types of loans, and that there be no difference in owner contributions for insured or non-insured projects.

Response. On April 10, 1991, HUD issued "Housing Notice H91–30, Operating Assistance Funding Under the Flexible Subsidy Program." This notice contained a requirement that owners of limited dividend projects contribute a minimum of 25 percent of the requested operating assistance loan. This requirement was applicable without regard to whether the project was HUD-insured or non-HUD-insured. The interim regulations for the capital improvement loan program also require a minimum 25 percent owner contribution, and also do not differentiate between HUD-insured and non-insured projects. Thus, the discrepancy between insured and uninsured projects, which previously existed in the Flexible Subsidy Program, has been eliminated. On the issue of the amount of the owner contribution, as discussed in the response to the preceding comment, this amount can be lowered when there is sufficient justification for doing so.

With respect to the issue of non-cash contributions, the regulations in subpart B, governing operating assistance loans, permit a non-profit owner to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capability to make a cash contribution. (See § 219.205(b)(2).) In the regulations governing capital improvement loans, HUD exempts non-profit owners from the 25 percent owner contribution requirement, and therefore, the issue of non-cash contributions does not arise in that context. With respect to for-profit entities, HUD has determined the non-cash contributions are inappropriate for capital improvement loans, as the following example illustrates: a capital improvement loan program of $1,000,000 is approved. In an ordinary case involving a limited dividend owner, $750,000 would come from HUD, and $250,000 from the owner's funds. A greater amount would come from HUD (with a corresponding lesser amount from the owner), only to the extent that the owner is given credit for cash contributions used to repair capital items within the past 24 months. (See § 219.305(c)(3).) In the case of a non-profit owner, the entire $1,000,000 would come from HUD in the form of the capital improvement loan. If $250,000, or any portion thereof, were allowed as a contribution of services, the result would be that a portion of the capital improvements would not be completed.

Comment. One commenter offered several alternative forms of owner contribution other than the required "cash" contribution. The commenter requested that HUD consider owner contributions in the following forms:

(1) A non-interest bearing owner loan or interest-bearing owner loan, repayable from the development as a project expense or from residual receipts;

(2) Deferred, unpaid management fees;

(3) Dividends (not distributions) deferred prospectively or retroactively; and

(4) Mortgagee contributions, such as debt service deferrals and low interest energy loans based on "shared savings" repayments.

Response. As discussed in the response to the preceding comment, in the case of capital improvements, the owner contribution to the project must be one of immediately available cash in order to ensure that the capital improvements can be undertaken. With one exception, HUD does not impose limitations on the source of the cash contribution. Section 219.305(c)(2) provides that the cash must not be taken from project income, but may be taken from surplus cash from the project.

3. Reduce Interest Rate on Loan if Owner Exceeds Required Contribution

Comment. One commenter suggested that since HUD has the authority to reduce interest rates to as low as one percent to decrease the impact on tenant rents (see § 219.320(b)(4)), HUD should consider offering owners the option of making a 30 percent contribution in return for a capital improvement loan with an interest rate in the one to three percent range, rather than the six percent which the regulations indicated will be the standard rate.

Response. The owner's contribution is only one factor in determining the interest rate of the loan, and would not by itself be a reason to lower the interest rate. A six percent rate is not "standard" in the sense that it will be the rate charged on all loans. The six percent rate is simply the maximum rate HUD can charge as long as the "applicable Federal rate" determined by the Secretary of the Treasury exceeds 8.5 percent. (See § 219.320(b)(3).) Should the Federal rate fall below 8.5 percent, the maximum rate also would drop. There also are other reasons—principally an extreme rent burden caused by debt service on the new loan—which could result in an interest rate lower than the maximum allowable rate.

4. Reduce Owner Contribution if Owner Waived Dividends

Comment. One commenter stated that HUD should be sensitive to those owners who took few distributions from property, and instead left the distribution with the property. The commenter offered the following example: "An owner took two distributions in 18 years. If the owner ever waived his distribution, it is unfair to ask the owner for more money." The commenter stated that, in such circumstances, the Secretary should exercise discretion and waive the additional money required from the owner.

Response. Few, it any, owners went into the section 221(d)(3) Below Market Interest Rate (BMIR) Program or the section 236 Program for the limited dividend they offered. If an owner waived the dividend, it was part of a trade-off in which HUD offered additional section 8 assistance, or, for example, a new Flexible Subsidy loan, in order to effect certain project improvements. If a dividend was waived solely at an owner's discretion, this was a business decision, and would not affect the contribution required for a capital improvement loan.

Amount of Capital Improvement Assistance (§ 219.315)

Section 219.315 specifies how the amount of capital improvement assistance will be determined.

Comment. One commenter requested that "soft costs" should be incorporated in the capital improvement loan. The commenter stated that reasonable legal and accounting costs are justifiable costs in the capital improvement program.

Response. "Soft costs" (e.g., accounting fees, financing fees) are expected to be minimal to non-existent. The loan documents are uncomplicated, and, consequently, legal expenses should be nominal. Formal "cost certification" is not required for the Capital Improvement Loan Program. Accounting and auditing expenses would be absorbed by the project in the normal course of project operations. Accordingly, HUD does not wish to alter the regulation to provide for "soft costs" as part of the loan. However, necessary architectural and engineering fees could be included in the Capital Improvement Loan Program.

Interest Rates on Loans (§ 219.320(b))

Section 219.320(b) establishes the minimum and maximum interest rates that HUD may charge on capital improvement loans—three and six percent, respectively.

Comment. One commenter stated that some cases may warrant an interest rate lower than the six percent ceiling, and recommended that HUD approve a lower rate if cash flow projections indicate that a higher debt service rate cannot be serviced. The commenter stated that some cases may warrant Section 8 assistance and a loan rate of one percent in order to avoid an extreme rent burden on tenants.

Response. The regulations impose strict limitations on any rent increases resulting from a Capital Improvement Loan, and authorize actions, such as a lower interest rate and Section 8 assistance, to remedy this situation.

Security for the Capital Improvement Loan (§ 219.320(c))

Section 219.320(c) provides, in relevant part, that the project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

Comment. One commenter stated that the final rule should expressly state how the capital improvement loans are to be secured. The commenter stated that it is

important that owners of non-insured projects know what security HUD will require in order for them to determine whether a capital improvement loan is feasible.

Response. For projects with insured mortgages, the owner will be required to execute a Note and Mortgage, along with a Deferred Recordation Agreement. This agreement will entitle HUD to record the documents at a later date should the mortgage be assigned, or at such time as the mortgagee no longer has an interest in the project. Projects with HUD-held mortgages do not require the use of the Deferred Recordation Agreement because HUD is already the mortgagee. For projects with uninsured mortgages, the security arrangements will be left to the discretion of the State Housing Finance Agency.

General Comments

1. Keep the Flexible Subsidy Program Flexible

Comment. One commenter stated that the Flexible Subsidy Program will best achieve its objectives by allowing project owners the widest range of program options within which to structure a loan, without having to seek a waiver from the Secreary for the slightest variance.

Response. The operating assistance loan and the capital improvement loan components of the Flexible Subsidy program are being implemented through a competitive NOFA process. Therefore, any required waivers can be handled uniformly for all projects. Additionally, the program currently offers sufficient variations in matters such as interest rates and owner contribution so as to negate the need for a large number of waivers.

2. Acquisition of Privately-Owned Housing by Public and Nonprofit Entities

Comment. One commenter encouraged HUD to consider the provision in the Housing and Community Development Act of 1987 concerning acquisition of at-risk assisted, privately-owned housing by public or non-profit entities.

Response. Although this comment is not germane to the rule, HUD does not discourage acquisition of privately-owned housing by public or non-profit entities, as permitted by law.

3. Increase Funding for Flexible Subsidy Program

Comment. One commenter advised that it was concerned that funding was inadequate for the two Flexible Subsidy programs, and requested that HUD increase substantially the funding for this program.

Response. This is a legislative policy issue, and not a matter of regulation.

IV. Other Matters

Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with the March 7, 1989 interim rule. That Finding remains applicable to this final rule, and is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 7th Street, SW., Washington, DC 20410.

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of this rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601), has reviewed this rule before publication and, by approving it, certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule establishes final regulations that will govern a HUD program which provides financial assistance to owners of troubled projects to remedy the disrepair of necessary capital items and to provide operating subsidy to these projects. This assistance is provided to qualifying projects without regard to the size of the project.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance to HUD-assisted multifamily housing projects, but will not interfere with State or local governmental functions.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule is listed as sequence number 1169 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16829), under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog

The Catalog of Domestic Assistance number for the program affected by this rule is 14.164.

List of Subjects in Part 219

Loan programs—housing and community development, low- and moderate-income housing.

Accordingly, 24 CFR part 219 is revised to read as follows:

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

Subpart A—General Provisions

Subpart B—Operating Assistance

Subpart C—Capital Improvement Loans

Authority: 12 U.S.C. 1715z-1a; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 219.101 Purpose.

The purposes of the Flexible Subsidy program are to provide assistance to restore or maintain the financial soundness of certain projects; to assist in the improvement of the management of certain projects; to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing; and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1959, or the Housing and Urban Development of 1965, without regard to whether the projects are subject to insured financing under the National Housing Act.

§ 219.105 Types of projects.

The types of rental or cooperative housing projects that may be eligible for assistance under this part include only the following:

(a) A project assisted under the section 236 Interest Reduction Program, the section 221(d)(5) Program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program;

(b) A project that was constructed more than 15 years before assistance is to be provided under this part with a loan under the section 202 Program for Housing for the Elderly or Handicapped;

(c) A project assisted under section 23 of the United States Housing Act of 1937 (1937 Act), as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act;

(d) A project assisted under the section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program; or

(e) A project that met the criteria in paragraph (a) or (b) of this section before acquisition by the Secretary and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this part) that provides that the low- and moderate-income character of the project will be maintained; except that with respect to any project sold after October 1, 1978; operating assistance under subpart B of this part and capital improvement loans under subpart C of this part shall be available for a period not to exceed three years.

§ 219.110 General eligibility.

Assistance under this subpart may not be made available unless the Secretary has determined that:

(a) This assistance, when considered with other resources available to the project, is necessary, will restore or maintain the financial or physical soundness of the project and will maintain the low- and moderate-income character of the project. "Other resources" include but are not limited to mortgage modification agreements, owner contributions, and assistance from State or local programs;

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage;

(c) This assistance will be less costly to the Federal Government over the useful life of the project than other reasonable measures by which the Secretary could maintain the low- and moderate-income character of the project;

(d) The project owner, together with the mortgagee in the case of projects not insured under the National Housing Act, has provided or agreed to provide assistance to the project in a manner determined by the Secretary in accordance with § § 219.205(b) and 219.305(c);

(e) The project is, or can reasonably be made, structurally sound, as determined from information resulting from an on-site inspection of the project;

(f) Project management is being conducted by persons who meet satisfactory levels of competency and experience as determined by the Secretary in the management review process; and

(g) The project is being operated and managed in accordance with a management improvement and operating (MIO) plan that is designed to reduce the operating costs of the project and that has been approved by the Secretary—except for a project for which the only assistance provided under this part is for capital improvements under subpart C. (See § 219.310(b).)

§ 219.115 Flexible Subsidy Fund.

(a) The Flexible Subsidy Fund is a revolving fund established in the Treasury of the United States that is available to the Secretary, to the extent approved in appropriation Acts, to provide assistance under this part.

(b) The Fund consists of the following:

(1) Any amount appropriated to carry out the purpose of this part;

(2) Any amount repaid on any assistance provided under this part;

(3) Any amounts credited to the Section 236 program excess rental receipts fund; and

(4) Any amount received by the Secretary under this program, including any interest on investment of funds as described in paragraph (c) of this section.

(c) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this part will be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(d) At the beginning of each fiscal year, funds are allocated for two categories of projects: State agency financed non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Each category is allocated an amount based on the number of units in potentially eligible projects of that category as a percentage of the total number of units in all potentially eligible projects. Once these two funding categories are established, each category will be administered to comply with the statutory requirement concerning spending for the capital improvement loan program enumerated in paragraph (e) of this section, by spending 40 percent of its allocation, or its share of the stated dollar amount (whichever is less), to the extent of approvable applications.

(e) The Secretary will use not less than $30 million, or 40 percent of the amounts available in the Fund (subject to paragraph (a) of this section) in any fiscal year (whichever is less), for purposes of providing capital improvement loans under subpart C of this part, to the extent of approvable applications. If any of the amounts set aside for capital improvement loans remain unreserved 60 days before the end of a fiscal year, they will become available for operating assistance under subpart B of this part. In the event additional operating assistance becomes available under a published Notice of Funding Availability (NOFA), applicants who have applied for operating assistance in response to that NOFA are not required to reapply for this assistance.

(f) Funding decisions are made on a periodic basis, using the applicable priorities enumerated in subparts B and C of this part. As the end of each fiscal year approaches, HUD will determine to what extent there are funds required to be used for capital improvement loans (under paragraph (e) of this section) that are allocated for one of the two major categories (described in paragraph (d) of this section) but are unlikely to be used by projects of that category. In the last quarter, to the extent there is to be an excess in either of the categories for capital improvement loans that could be used for loans to eligible applicants of the other category, the funds will be reallocated.

§ 219.120 Local government consultation.

The Secretary, before making assistance available to a project, will consult with the appropriate officials of the unit of local government in which the project is located and will seek the assurances that:

(a) The community in which the project is located is providing, or will provide, essential services to the project in keeping with the community's general level of these services;

(b) The real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) Assistance to the project under this part would not be inconsistent with local plans and priorities.

§ 219.125 Environmental requirements.

To be approved for funding under this part, an application for assistance to cover a capital improvement, as defined in § 219.305, will be reviewed for compliance with applicable environmental requirements, as follows:

(a) If the proposed capital improvements involve major mechanical systems, HUD will determine whether the project is located in a 100-year floodplain, and if so, will take all feasible actions to minimize the impact of flooding on the mechanical systems.

(b) If a project is listed on the National Register of Historic Places, the proposed use of funds will be reviewed for compliance with the National Historic Preservation Act of 1966. As a general rule, in-kind replacements will not trigger review under that Act. If the project is not listed on the National Register but is located in an historic district, review under the Act will only be required where there are proposed alterations to the exterior that are not in-kind.

§ 219.130 Waivers.

Upon a determination of good cause, the Secretary of Housing and Urban Development (Secretary) may, subject to statutory limitations, waive any provision of this part. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. Waivers granted under this section are subject to the requirements of Section 106 of the Department of Housing and Urban Development Reform Act of 1989.

§ 219.135 Displacement and temporary relocation.

(a) *General.* No person shall be displaced as a direct result of rehabilitation assisted under this part, unless approved in advance by HUD. If displacement occurs, the "displaced person" (defined in paragraph (e) of this section) shall be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* Rehabilitation assisted under this part may require temporary relocation of residents. The following policies cover residential tenants who will not be required to move permanently, but who must be temporarily relocated in order to carry out the rehabilitation. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Appeals.* A person who disagrees with the owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the owner. A person who is dissatisfied with the owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(d) *Responsibility of owner.* The owner shall ensure compliance with the URA, the regulations at 49 CFR part 24, and the requirements of this section, notwithstanding any third party's contractual obligation to the owner to comply with these provisions. The owner shall maintain records in sufficient detail to demonstrate such compliance.

(e) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of rehabilitation that is assisted under this part. This includes any permanent, involuntary move from the property, including any permanent, involuntary move that is made:

(i) After notice of the person from the owner to move permanently from the property, if the move occurs on or after the date that the owner submits to HUD an application for assistance that is later approved and funded; or

(ii) Before the submission of the application to HUD, if the owner or HUD determines that the person was displaced as a direct result of the rehabilitation assisted under this part; or

(iii) By a tenant-occupant of a dwelling if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between HUD and the property owner, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered

reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

(ii) The person moved into the property after the submission of the application to HUD and, before signing a lease and commencing occupancy, received written notice of the application for assistance, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase), and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the rehabilitation; or

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of the rehabilitation.

(3) The owner may request, at any time, a HUD determination of whether a displacement is or would be covered under this section.

(f) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a displaced residential tenant, the term "initiation of negotiations" means the execution of the agreement between HUD and the property owner under which the assistance is provided.

Subpart B—Operating Assistance

§ 219.205 Amount of operating assistance.

(a) The Secretary will provide the initial and subsequent operating assistance to permit the project to attain and maintain financial soundness, in an amount that is consistent with the project's MIO plan, subject to the availability of funds as described in § 219.115, and subject to the limitation on housing assistance as set forth in 24 part 12, subpart D. Subject to these limitations, the amount of assistance provided under this subpart will not exceed the sum of the following:

(1) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance that were caused by the deferral of regularly scheduled maintenance and repairs, or by the failure to make necessary and timely replacements of equipment and other components of the project. A repair or replacement item is only eligible under this program if no previous payment of HUD-related assistance (such as assistance under this part, a Housing Development Grant, or a Community Development Block Grant) has been made. A capital improvement (as described in § 219.305(a)) is eligible for funding as part of operating assistance only if it is necessary to meet local building codes or to maintain the project in a decent, safe, and sanitary condition and the Secretary determines that this method of funding the improvement is the most efficient;

(2) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies (which exist at the beginning of the first year of assistance and for which payment has not previously been made) in the reserve fund established by the project owner for the purpose of replacing capital items;

(3) An amount not greater than the amount by which the estimated operating expenses for the year for which assistance is made available exceed the estimated revenues to be received by the project during that year, as determined in accordance with § 219.210; and

(4) An amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards approved by the Secretary.

(b) The owner must provide assistance to the project, as follows:

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income, but may be taken from surplus (as defined in the Regulatory Agreement) from the project. Cash contributions by the owner made within the 24 months before application for operating assistance under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

(i) Cash that has already been agreed to be contributed to the project as a condition for receiving a capital improvement loan will not be considered for purposes of meeting this contribution requirement;

(ii) Cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not generally be considered for purposes of meeting this contribution requirement unless HUD finds that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval to the TPA; however, the TPA must have received preliminary approval not later than 36 months prior to the HUD's receipt of the flexible subsidy loan application for this contribution to be considered as the matching contribution.

(2) A non-profit owner may be permitted to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capability to make a cash contribution.

§ 219.210 Application.

(a) The project owner must submit an application on a form approved by the Secretary.

(b) the application will include an MIO plan that includes the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted; and

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving.

(c) The application will include documentation of eligibility, as described in § 219.110, and shall also include:

(1) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part; and

(2) Disclosures of other government assistance and expected sources and uses of that assistance, and the identity of interested parties, as required by 24 CFR 12.32.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0395)

§ 219.215 Estimating project revenue and operating expenses.

(a) *Computing estimated project revenue.* The estimated revenue for a

project with respect to any year is equal to the sum of the following:

(1) The estimated amount of rent that is to be paid by the tenants of the project during the year (without regard, in the section 236 Interest Reduction program, to whether the owner has established and is collecting a "basic rent", as defined in 24 CFR 236.2), in accordance with the following:

(i) The rent being paid or projected to be paid at the time project revenue is estimated; but, in no event less than 30 percent of the adjusted income of each tenant, or, in the case of a tenant paying his or her own utilities, a percentage of income that is less than 30 percent and that takes into account the reasonable costs of utilities. Percentages of adjusted income, as defined in 24 CFR part 813, can be based on the most recent tenant income certification. In no case will the amount used for this estimate exceed the HUD-approved rent for the project.

(ii) A vacancy allowance may be used in developing the estimated revenue for insured, non-insured projects and HUD-held projects. This allowance may not exceed six percent of the rental payments otherwise to be anticipated, unless the Secretary permits a higher allowance for the first three years in which assistance is to be provided to a project under this subpart because the higher allowance is necessary to carry out the purposes of this subpart.

(2) The estimated amount of assistance payments to be made on behalf of the tenants during the year, other than assistance provided under this subpart; and

(3) Other income attributable to the project as determined by the Secretary, e.g., commercial rental income, tax rebates or refunds, condemnation or insurance award proceeds.

(b) *Computing estimated project operating expenses.* The estimated operating expenses of any project with respect to any year shall include all estimated operating costs that the Secretary determines to be necessary and consistent with the MIO plan for the project for the year. These costs include, but are not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs that should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The estimated operating expenses may not include any return on the equity investment of the owner.

§ 219.220 Payment and repayment of operating assistance.

(a) *Basis for payment.* Assistance payments will be computed on an annual basis in accordance with § 219.205, payable at least quarterly, after the amount payable from the reserve for replacements (if any) and the owner contribution payable as part of the approved plan have been paid. At the time of each payment, the operations of the project will be reviewed by the Secretary to determine that they are consistent with the MIO plan. Continued payments will be contingent upon satisfactory performance.

(b) *Basis for repayment of assistance.* Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0395)

§ 219.225 Effect of assistance on rent increase approvals.

To assure that projects eligible for assistance under this part restrain costs in every way possible, including by using assistance under this part to upgrade capital items to meet cost-effective energy efficiency standards, the Secretary will consider, as part of the rent increase approval process under 24 CFR part 245, whether the project owner could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures that are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption. Where the Secretary determines that the owner could exercise such control, the amount of a proposed rent increase may be adjusted to reflect the estimated savings that could be attained.

§ 219.230 Priorities for funding.

HUD will give funding priority to projects currently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under this subpart. To the extent that funds remain available, assistance may be provided to projects that, on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the next five years, and that satisfy the eligibility requirements of § 219.110.

Subpart C—Capital Improvement Loans

§ 219.305 Eligibility.

(a) Assistance is available under this subpart for capital improvements. For purposes of this subpart, "capital improvements" include any major repair or replacement of building components: *i.e.*, roof structures, ceiling, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, including any major repair or replacement of any short-lived building component or equipment before the expiration of its useful life. Capital improvements also may include limited supplements or enhancements to mechanical equipment needed for health and safety of the residents, such as air conditioning, heating equipment, or water softeners, where they do not exist. Capital improvements do not include maintenance of any such item.

(b) Assistance under this subpart will be in the form of a loan. The Secretary will provide this assistance only if the Secretary determines that the owner's reserve for replacements (including any surplus cash, residual receipts or other funds from the project account or escrow outside the project account that could be used to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months, as described in the owner's work write-up (submitted as part of the application), and that the owner has funded the reserve fund in accordance with HUD requirements. An owner's Reserve Fund for Replacements may only be used to cover needed capital improvements if the Reserve Fund for Replacements exceeds $1,000 per unit, and then only to the extent of depleting it by up to 50 percent of the amount over $1,000 per unit on the date the capital improvement loan is made.

(c) An owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from this contribution requirement. The total estimated cost of the capital improvements includes the cost of the estimate of work, the cost of materials, and the cost of labor. This estimate must be approved by HUD as cost effective.

(1) Generally, the contribution must be made in cash. The contribution must not

be taken from project income, but may be taken from surplus cash (as defined in the Regulatory Agreement) from the project. Cash contributions by the owner made within the 24 months before application for a capital improvement loan under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

(2) Cash that already has been agreed to be contributed to the project as a condition for receiving operating assistance will not be considered for purposes of meeting this requirement.

(3) Cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not generally be considered for purposes of meeting this contribution requirement unless HUD finds that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA; however, the TPA must have received preliminary approval not later than 36 months prior to HUD's receipt of the CILP loan application for this contribution to be considered as the matching contribution; and

(4) When the owner has spent its own money (as from surplus cash) to attempt to repair capital items within the 24 months before HUD's receipt of the capital improvement loan application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), the expenditure will be considered for purposes of meeting the contribution requirement.

§ 219.310 Application.

(a) A project owner must submit an application on a form approved by the Secretary, which will include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305. The project owner also must submit:

(1) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part.

(2) Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32.

(b) The application must be accompanied by a MIO plan only in the following cases:

(1) A default under the mortgage;

(2) A violation of the fiscal requirements or property maintenance requirements of the regulatory agreement (for other than willful or fraudulent reasons);

(3) An unsatisfactory or marginally satisfactory management review in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD); and

(4) A situation that HUD Headquarters has determined requires submission of a MIO plan.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0395)

219.315 Amount of assistance.

(a) The amount of assistance available under this subpart will not be greater than is necessary to make the assisted activity feasible after taking into account other government assistance, if any, in accordance with the provisions of 24 CFR part 12, subpart D.

(b) Subject to the provisions of paragraph (a) of this section, the amount of assistance will not exceed the sum of the following, minus the owner contribution made in accordance with § 219.305:

(1) The amount the Secretary determines is necessary to cover capital improvements at the project with respect to capital items that have failed, or are likely to fail or deteriorate seriously within 24 months;

(2) The amount the Secretary determines is necessary to upgrade the capital items and related capital items to meet cost-effective energy efficiency standards approved by HUD; and

(3) The amount the Secretary determines is necessary to comply with the Department's standards in 24 CFR part 8 for accessibility to individuals with handicaps.

§ 219.320 Loan terms and conditions.

(a) The length of the loan term will be determined based on various factors, including the useful life of the improvement, the amount financed, and the impact on tenant rents. The term generally will be for the remaining period of the original mortgage, and the term may not exceed that period. With respect to a non-insured project, the loan term will generally be for the remaining period during which the owner is under an obligation to provide housing for lower income families, and the term may not exceed that period.

(b) In determining the interest rate on the loan, the Secretary will consider factors such as the length of the loan term and the effect of the required debt service on tenant rents.

(1) The minimum rate is the applicable Federal rate determined by the Secretary of the Treasury at the end of the Federal fiscal year before the loan is to be made, minus three percentage points, plus an allowance established by the Secretary of HUD to cover administrative costs and probable losses under the program.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the rate to be charged may not be less than three percent nor more than six percent.

(3) The rate that represents both the minimum and the maximum rate is six percent, unless the applicable Federal rate determined by the Secretary of the Treasury for a fiscal year is less than 8.5 percent or HUD changes the allowance from its initial amount of .5 percent, thereby producing a minimum rate other than six percent. In that event, HUD will publish in the **Federal Register** the following: The rate determined by the Secretary of the Treasury, the allowance established by HUD, and the minimum rate.

(4) Notwithstanding the minimum rate limitations specified in paragraphs (b)(1) and (b)(2) of this section, the Secretary may charge a lesser rate if the Secretary determines that the lower rate is necessary to maintain reasonable rental rates. (See § 219.325.)

(c) Each loan for capital improvements is a liability of the project and cannot be discharged in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11, United States Code. The project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

(d)(1) A capital improvement loan may be made under this subpart to a project owner who already has received assistance under this part, so long as the capital items that are the subject of the loan application have reached the end of their useful life and the project meets all of the applicable eligibility criteria for the capital improvement loan. (See §§ 219.110 and 219.305.)

(2) A capital improvement may not be financed partly by operating assistance under subpart B of this part and partly by a capital improvement loan under subpart C of this part. However, a project owner may apply for assistance to cover deferred liabilities under subpart B of this part and, simultaneously, apply for a loan to cover capital improvements under subpart C of this part.

§ 219.325 Effect on rental rates.

(a) Rent increases resulting from the debt service and other expenses of a

loan for capital improvements under this part for an owner whose project rents are not approved by HUD and that is subject to a plan of action approved under 24 CFR part 248 are governed by the rent agreements entered into as part of that plan of action.

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under subpart C of this part for a project other than one described in § 219.330(a) would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, or where appropriate to implement a plan of action under part 248 of this chapter, the Secretary may consider taking any or all of the following actions:

(1) Increase the amount of the owner's contribution under § 219.305 to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(2) Increase the term of the loan determined under § 219.305(a) to a term that does not exceed the remaining term of the mortgage on the project.

(3) Notwithstanding § 219.320(b), reduce the rate of interest on the capital improvement loan to a rate not lower than one percent.

(4) Provide assistance under the Section 8 Existing Housing Program (including project-based Certificates or Loan Management Set-aside), to the extent amounts are available for such assistance, and without regard to the limitation contained in 24 CFR 813.105 on the number of non-very low income families that may be admitted to the program.

(5) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with § 219.110(b).

§ 219.330 Priorities for funding.

(a) The Secretary will establish an annual set-aside for projects that are eligible for incentives to continue to operate as low- to moderate-income housing under a plan of action in accordance with 24 CFR part 248, to assure that top priority for funding capital improvement loans is given to this category of projects. This set-aside may be increased or decreased during the year if it is determined to be appropriate.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to projects based on the extent to which—

(1) The capital improvements for which the loan is requested are immediately required;

(2) The project serves as the residence of lower income families, and the extent to which other suitable housing is unavailable for such families in the areas in which the project is located;

(3) The capital improvements for which the loan is requested involve the life, safety, or health of the residents of the project, or involve major capital improvements in the project; and

(4) The project demonstrates the greatest financial distress, while continuing to meet the requirements of § 219.110.

§ 219.335 Operations.

(a) Interest on the capital improvement loan starts to accrue and the loan amortization period begins when the loan proceeds have been spent.

(b) If, after the work is completed, the estimated cost proves to be less than originally estimated, the excess will be returned to the Flexible Subsidy Fund, described in § 219.115, unless HUD has approved the excess for additional items or improvements. Any anticipated cost overruns must be reported to HUD immediately. The principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds. Until the project owner receives a written commitment for an increase in the principal balance of the loan, the project owner will be solely responsible for any excess costs of performing the capital improvements. In the case of an identity of interest firm, no increases in the principal balance of the capital improvement loan to cover cost overruns will be considered.

Dated: July 15, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-17150 Filed 7-20-92; 12:01 pm]

BILLING CODE 4210-27-M

Reader Aids

Federal Register

Vol. 57, No. 140

Tuesday, July 21, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

29181-29428.....1
29429-29628.....2
29629-29782.....6
29783-30098.....7
30099-30378.....8
30379-30634.....9
30635-30896.....10
30897-31088.....13
31089-31302.....14
31303-31428.....15
31429-31628.....16
31629-31946.....17
31947-32148.....20
32149-32412.....21

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51.....31947
305.....30101

3 CFR

Executive Orders:
12543 (See rule of June 29).....29424
12544 (See rule of June 29).....29424
12735 (See Interim rule of July 7, 1992).....31309
12803 (See Notice of June 18).....28867

Proclamations:
6352 (See USTR Notice of July 9).....30531
6428 (See Notice of July 10).....30726
6447 (See USTR Notice of July 8).....30286
6452.....29429
6453.....29625
6454.....29629
6455.....30069
6456.....30097
6457.....31627
6458.....31945

Administrative Orders:
Presidential Determinations:
No. 92-34 of June 22, 1992.....30099

4 CFR

22.....31272
30.....31272

5 CFR

294.....32149
531.....32151
532.....29783, 30635
550.....31629
831.....29783, 32153
841.....32153
843.....29783
870.....29783

Proposed Rules:
351.....31332
591.....32183
831.....31333
843.....31333

7 CFR

301.....31303, 31305, 31947
318.....31306
905.....31089, 31235
916.....31090, 31235
917.....31090, 31092
946.....30379
948.....30380
971.....31631
980.....30380
981.....30382
989.....31632
1093.....31308
1096.....31635
1205.....29181, 29431
1209.....31948
1220.....29436, 31094
1430.....30987
1435.....32155
1955.....31636

Proposed Rules:
12.....29658
13.....31668
51.....29449
55.....29660, 32184
56.....29660, 32184
59.....29660, 32184
70.....29660, 32184
318.....31130
400.....30430
723.....31325
800.....31668
910.....31670
928.....31142
987.....31670
1703.....32184
1942.....31462

8 CFR

214.....29193, 31954
242.....30898
251.....29193
258.....29193
274a.....31954

9 CFR

77.....31429
78.....31430
96.....29784
98.....29193
122.....30898
156.....30898
327.....30635

Proposed Rules:
50.....31671
51.....29225, 31671
77.....31671
78.....31671
92.....31671
124.....30926
145.....31563
147.....31563
160.....30432
161.....30432
162.....30432
317.....31972
381.....31972

10 CFR

50.....30383

Proposed Rules:

605.....30171
1706.....31143

11 CFR

102.....31424

12 CFR

225.....30387
1102.....31645
1620.....32393

Proposed Rules:

Ch. I.....31336
Ch. II.....31336
Ch. III.....31336
6.....29808
19.....29808
34.....31594
206.....31974
208.....29226, 31594
225.....31594
263.....29226
308.....29662
325.....29662
333.....30433
362.....30435
365.....31594
563.....31336, 31594
565.....29826, 31404
607.....31673
618.....31673
625.....31463

13 CFR

101.....30391

14 CFR

21.....31957
23.....31957
39.....29194–29201, 29785, 30111, 30113, 30392–30534, 31096, 31104, 31431–31443, 31654, 31959
71.....30115, 30637–30818, 31960, 31961
91.....30818
97.....29442, 29443
121.....31275

Proposed Rules:

21.....31986
29.....31986
39.....29450–29453, 29681–29684, 29785, 30173, 30176, 30686, 30700, 31341, 31754, 31989, 31992
71.....29454, 29455, 29686, 29687, 30178, 30179, 30702, 30932, 31993

15 CFR

6.....30115
771.....30899, 31658
774.....30899
785.....31658
799.....31309
906.....31444
907.....31445
928.....31105
932.....31105
945.....31660

Proposed Rules:

921.....31926
922.....31150

16 CFR

Proposed Rules:

1204.....31467
1205.....31155

17 CFR

140.....29203
145.....29203, 31563
240.....31445, 32159
249.....32159
250.....31120

Proposed Rules:

150.....31674
229.....29582, 31156
240.....29564, 29582
249.....29564
250.....31156

18 CFR

157.....29631
271.....31123

19 CFR

4.....29633, 29634
10.....30638
162.....30639, 31754
353.....30900
355.....30900

Proposed Rules:

101.....31677
133.....30703

20 CFR

404.....30116
655.....29203, 30640

Proposed Rules:

416.....29244

21 CFR

2.....29353
5.....29353
10.....29353
73.....32174
176.....31312
310.....29353
314.....29353
320.....29353
443.....29353
510.....30641, 31313, 32175
520.....32175
524.....31314
558.....35176
807.....29354
1308.....31126

Proposed Rules:

Ch. III.....31160
Ch. I.....32185
101.....32058
356.....30534
821.....31754

22 CFR

41.....31446
121.....32148

23 CFR

Proposed Rules:

140.....31467
650.....29689
750.....31470

24 CFR

25.....31048, 31754
50.....32106
201.....30394
202.....31048, 31754
219.....32398
574.....32106
905.....31962
906.....31962

25 CFR

Proposed Rules:

515.....30346, 30353
519.....30346
522.....30346
523.....30346
524.....30346
556.....30346
558.....30346
571.....30384
573.....30384
575.....30384
577.....30384

26 CFR

1.....31754

Proposed Rules:

1.....29246, 29851, 30451, 31344
301.....29248

27 CFR

5.....31126
19.....32176
47.....29787
179.....29787

Proposed Rules:

4.....29456
20.....29763

28 CFR

0.....30395, 31314
20.....31315
44.....30397

29 CFR

20.....31450
507.....29203, 30640
571.....31563
1425.....30397
1910.....29204–29206
2610.....31318
2619.....31319
2622.....31318
2644.....31320
2676.....31321

30 CFR

946.....29788
950.....30121

Proposed Rules:

48.....29853
75.....29853
77.....29853
202.....31471
914.....31161, 31162
935.....31163

31 CFR

550.....29424

32 CFR

165.....29619
169a.....29206
290.....30904
385.....32178
706.....31451, 31452

Proposed Rules:

165.....29618
516.....31852

33 CFR

81.....29218
100.....30403, 30641, 30644
117.....30403, 30647
155.....29354
161.....31660
165.....30405, 30648, 31322, 31453, 31663
402.....30904

Proposed Rules:

100.....30704
110.....31471
117.....30451, 30647
165.....31472
168.....30058

34 CFR

74.....30328
75.....30328
76.....30328
77.....30328
237.....30328
263.....30328
300.....30328
356.....30328
562.....30328
630.....30328
653.....30328
654.....30328
674.....32342
675.....32342
676.....32342
762.....30328

Proposed Rules:

366.....30866
668.....30826

35 CFR

Proposed Rules:

133.....32187

36 CFR

7.....29794
327.....29218

37 CFR

1.....29634
2.....29634
3.....29634

Proposed Rules:

1.....29248, 31344
10.....29248

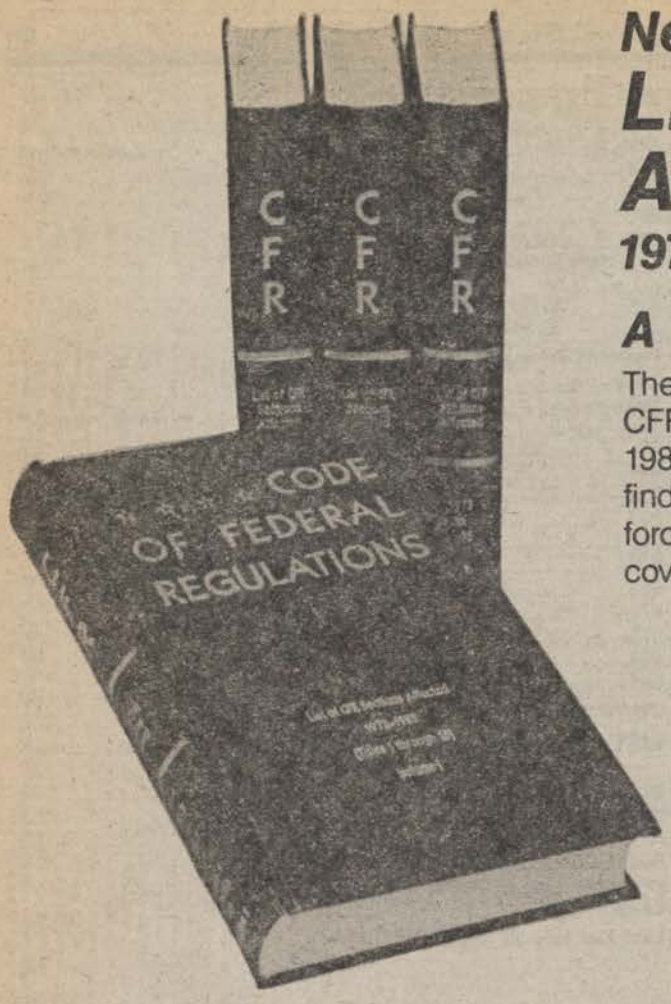
38 CFR

0.....31006
1.....31006
2.....31006
3.....31006
4.....31006
6.....31006
8.....31006
9.....31006
10.....31006
11.....31006
12.....31006
13.....31006
14.....31006
16.....31006
17.....31006
18.....31006
18a.....31006
18b.....31006
21.....31006

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 15, 1992



New Publication
List of CFR Sections Affected
1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries–(202) 512-2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	**FREE**	**FREE**
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

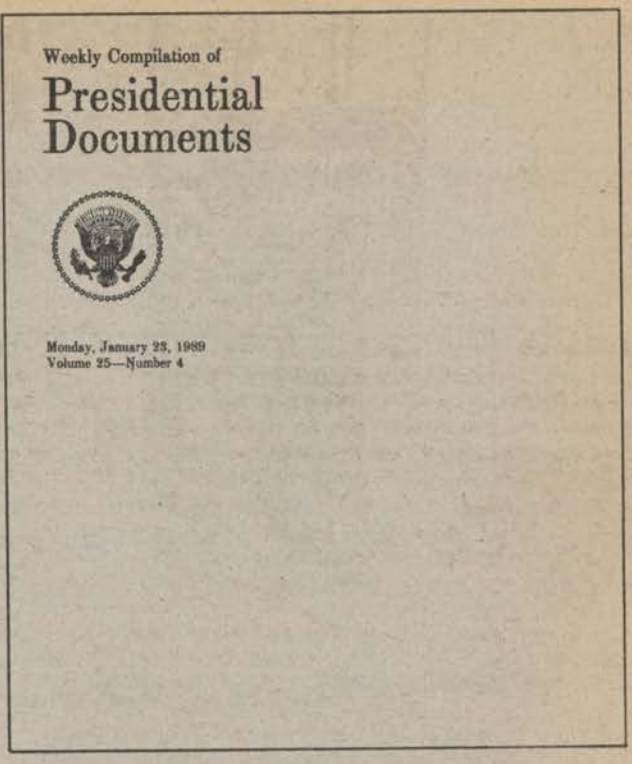
(Signature)

Rev 6-92

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6466**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

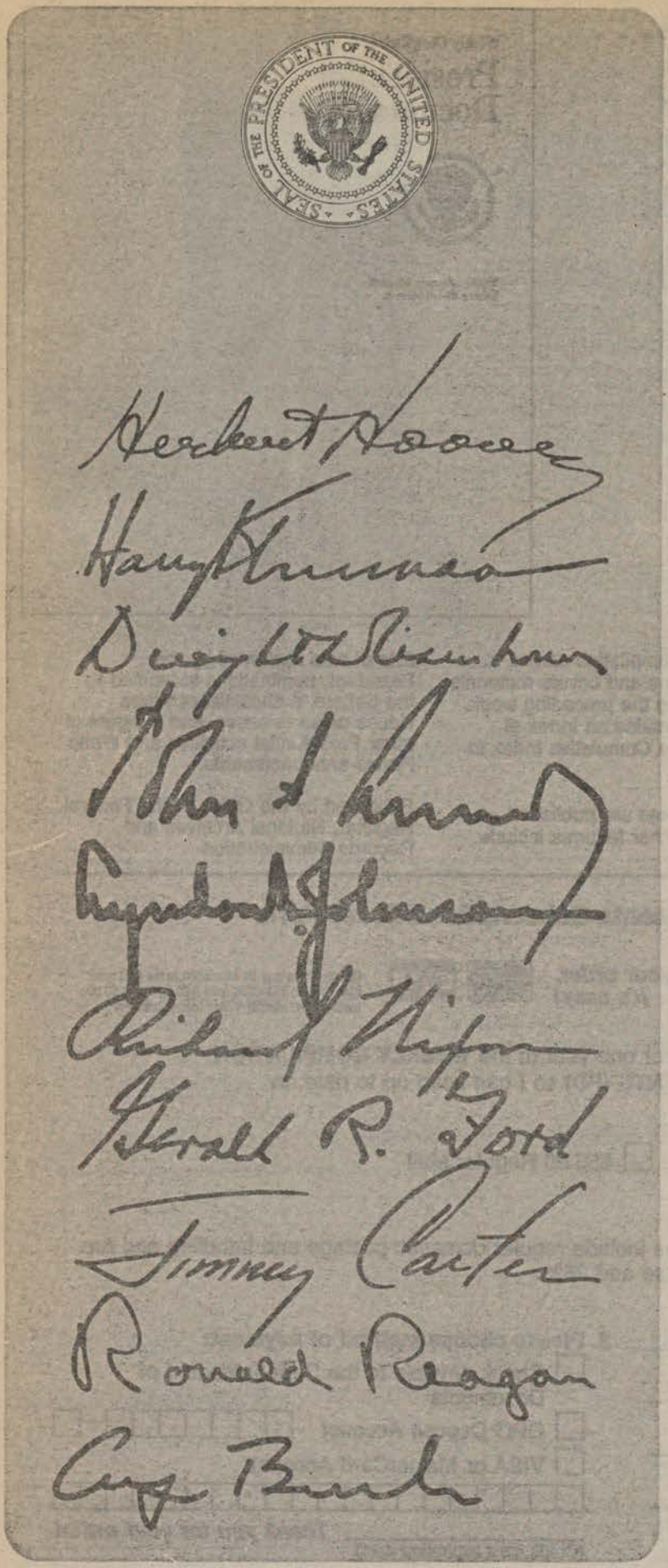
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) (Rev. 6-20-92)

4. Mail To: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Ronald Reagan

1983
(Book I) $31.00

1983
(Book II) $32.00

1984
(Book I) $36.00

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $30.00

1986
(Book I) $37.00

1986
(Book II) $35.00

1987
(Book I) $33.00

1987
(Book II) $35.00

1988
(Book I) $39.00

1988–89
(Book II) $38.00

George Bush

1989
(Book I) $38.00

1989
(Book II) $40.00

1990
(Book I) $41.00

1990
(Book II) $41.00

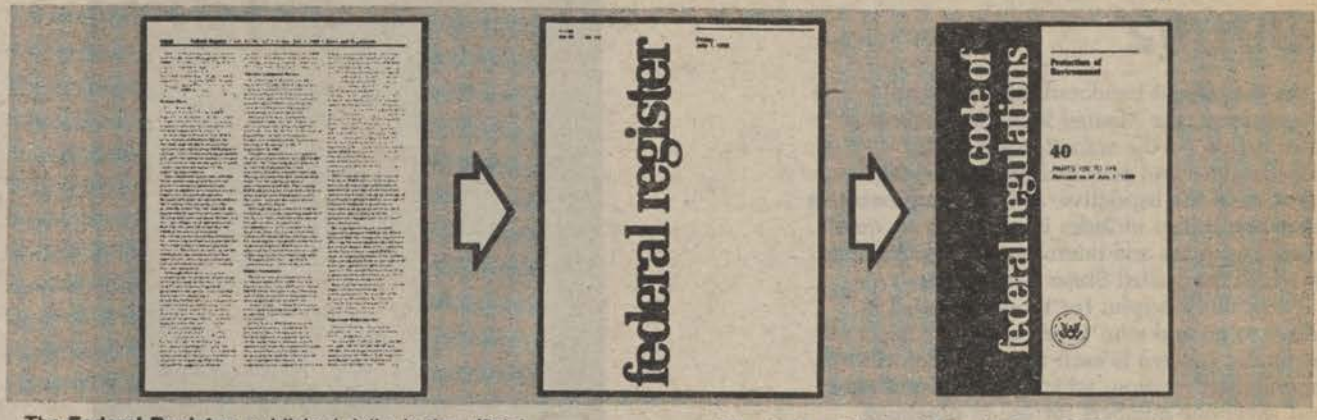
1991
(Book I) $41.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register,** published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register;** and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current **CFR** volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
***6463**

Charge your order. It's easy!

MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

(Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Order Now!

The United States Government Manual 1991/92

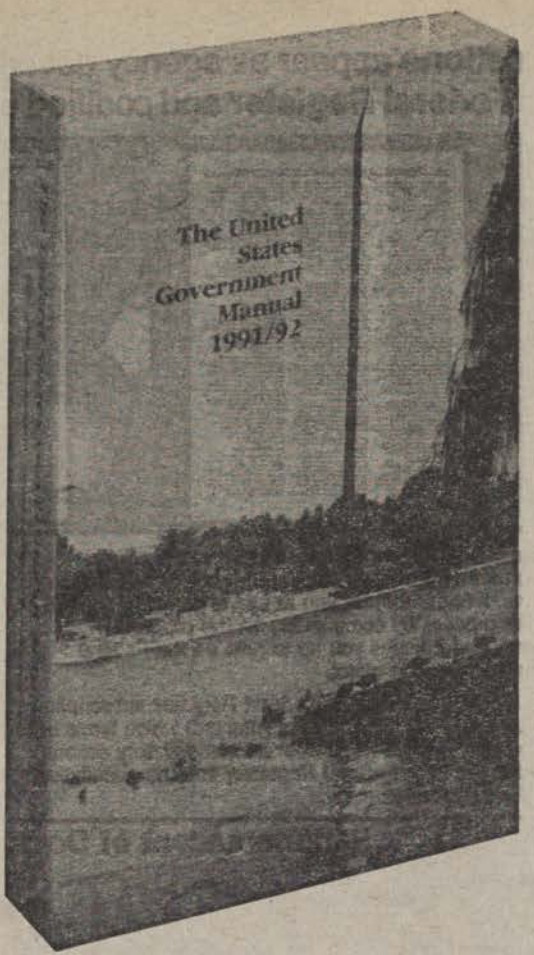
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$23.00 per copy



Superintendent of Documents **Publications** Order Form

P3

Order processing code:
* 6901

☐ **YES**, please send me the following:

Charge your order. It's Easy! MasterCard VISA

To fax your orders 202-512-2250

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1991/92 at $23.00 per copy. S/N 069-000-00041-0.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) (Rev. 11-91)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954